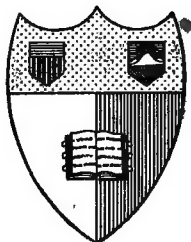




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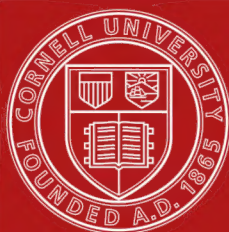
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DIGEST OF DECISIONS

of the UNITED STATES COURTS
BOARD OF GENERAL APPRAISERS
and the TREASURY DEPARTMENT

UNDER THE

CUSTOMS REVENUE LAWS

TOGETHER WITH THE .

TARIFF ACTS FROM 1883 TO 1913

AND CERTAIN OTHER
CUSTOMS REVENUE STATUTES

IN TWO VOLUMES
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DIGEST OF DECISIONS

OF THE

UNITED STATES COURTS, BOARD OF GENERAL APPRAISERS, AND THE TREASURY DEPARTMENT

UNDER THE

CUSTOMS REVENUE LAWS.

SECTIONS OF ACTS OF 1909 AND 1897 NOT REENACTED IN ACT OF 1913.

1909 **Sec. 27.** That the produce of the forests of the State of Maine upon the Saint John River and its tributaries, owned by American citizens, and sawed or hewed in the Province of New Brunswick by American citizens, the same being otherwise unmanufactured in whole or in part, which is now admitted into the ports of the United States free of duty, shall continue for two years after the date of the passage of this Act and no longer to be so admitted, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

That the produce of the forests of the State of Maine upon the Saint Croix River and its tributaries, owned by American citizens, and sawed or hewed in the Province of New Brunswick by American citizens, the same being otherwise unmanufactured in whole or in part, shall be admitted for two years after the date of the passage of this Act and no longer into the ports of the United States free of duty, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

1897 **SEC. 20.** That the produce of the forests of the State of Maine upon the Saint John River and its tributaries, owned by American citizens, and sawed or hewed in the Province of New Brunswick by American citizens, the same being otherwise unmanufactured in whole or in part, which is now admitted into the ports of the United States free of duty, shall continue to be so admitted, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

SEC. 21. That the produce of the forests of the State of Maine upon the Saint Croix River and its tributaries, owned by American citizens, and sawed or hewed in the Province of New Brunswick by American citizens, the same being otherwise unmanufactured in whole or in part, shall be admitted into the ports of the United States free of duty, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

1894 (No corresponding provision.)

1890 **SEC. 15.** That the produce of the forests of the State of Maine upon the Saint John River and its tributaries, owned by American citizens, and sawed or hewed in the Province of New Brunswick by American citizens, the same being otherwise unmanufactured in whole or in part, which is now admitted into the ports of the United States free of duty, shall continue to be so admitted, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

SEC. 16. That the produce of the forests of the State of Maine upon the Saint Croix River and its tributaries, owned by American citizens, and sawed in the Province of New Brunswick by American citizens, the same being unmanufactured in whole or in part, shall be admitted into the ports of the United States free of duty, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

1883

SEC. 2505. The produce of the forests of the State of Maine upon the Saint John River and its tributaries, owned by American citizens, and sawed or hewed in the Province of New Brunswick by American citizens, the same being unmanufactured in whole or in part, which is now admitted into the ports of the United States free of duty, shall continue to be so admitted, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

SEC. 2506. The produce of the forests of the State of Maine upon the Saint Croix River and its tributaries, owned by American citizens, and sawed in the Province of New Brunswick by American citizens, the same being unmanufactured in whole or in part, and having paid the same taxes as other American lumber on that river, shall be admitted into the ports of the United States free of duty, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

DECISIONS UNDER THE ACT OF 1897.

Herring-Box Shooks.—Certain produce of the forests of the State of Maine upon the St. John River and its tributaries, owned by American citizens, which consists of herring-box shooks, being simply pieces of wood sawed longitudinally and transversely to produce sizes suitable for being made up into boxes, are "otherwise unmanufactured in whole or in part" than by sawing, within the meaning of section 20, tariff act of 1897, and are free of duty under the provisions of said section, such articles having been admitted free of duty under similar previous legislation. In re Pike, T. D. 22303 (G. A. 4718), followed. Tide Water Oil Co. v. U. S. (171 U. S., 210), U. S. v. Hathaway (4 Wall., 404), and U. S. v. Quimby (ib., 406) distinguished.—T. D. 22590 (G. A. 4800).

Section 20 of the tariff act which went into effect July 24, 1897, admitting to free entry certain produce of Maine forests upon the St. John River, sawed or hewed in New Brunswick by American citizens, "which is now admitted into the ports of the United States free of duty," revives section 2508 of the Revised Statutes, a substantially similar provision, in full force and effect, and accords free entry to all articles which fell within the scope of its terms when it was in operation.

Herring-box shooks of a character within the language of said section 20 are entitled to free entry thereunder, notwithstanding such merchandise was dutiable under the tariff act of August 28, 1894.—T. D. 22303 (G. A. 4718).

DECISIONS UNDER THE ACT OF 1894.

Packing-Box Shooks of Maine lumber, sawed in New Brunswick, are dutiable as shooks and not free under paragraph 676 as sawed boards, rough. Sections 15 and 16 of the act of 1890 were repealed by the act of 1894, and shooks are not exempt under said sections.—T. D. 16565 (G. A. 3261).

Herring-Box Shooks, the produce of the forests upon St. John River, sawn in New Brunswick, are dutiable as shooks, and are not free under R. S. 2508. This section was contained in section 15 of the act of 1890, which was repealed by the act of 1894.—T. D. 15691 (G. A. 2872).

DECISIONS UNDER THE ACT OF 1890.

Clapboards Planed or dressed on one side in New Brunswick are further manufactured than sawed or hewed, and are not "unmanufactured in whole or in part."—T. D. 15012 (G. A. 2589).

Sec. 37. There shall be levied and collected annually on the first day of September by the collector of customs of the district nearest the residence of the managing owner, upon the use of every foreign-built yacht, pleasure boat, or vessel, not used or intended to be used for trade, now or hereafter owned or chartered for more than six months by any citizen or citizens of the United States, a sum equivalent to a tonnage tax of \$7 per gross ton.

1909 In lieu of the annual tax above prescribed the owner of any foreign-built yacht, pleasure boat, or vessel above described may pay a duty of 35 per centum ad valorem thereon, and such yacht, pleasure boat, or vessel shall thereupon be entitled to all the privileges and shall be subject to all the requirements prescribed by sections forty-two hundred and fourteen, forty-two hundred and fifteen, forty-two hundred and seventeen, and forty-two hundred and eighteen of the Revised Statutes and Acts amendatory thereto in the same manner as if said yacht had been built in the United States, and shall be subject to tonnage duty and light money only in the same manner as if said yacht had been built in the United States.

So much of section five of chapter two hundred and twelve of the laws of nineteen hundred and eight, approved May twenty-eighth, nineteen hundred and eight, as relates to yachts built outside the United States and owned by citizens of the United States is hereby repealed.

This section shall not apply to a foreign-built vessel admitted to American registry.

- 1897** (No corresponding provision.)
- 1894** (No corresponding provision.)
- 1890** (No corresponding provision.)
- 1883** (No corresponding provision.)

DECISIONS UNDER SECTION 37, ACT OF 1909.

Tonnage Tax on the Use of Foreign-Built Yachts.

TAX ON USE OF FOREIGN-BUILT YACHTS.—*Billings v. U. S.* (232 U. S., 261; T. D. 34429) followed to the effect that under section 37, tariff act of 1909, in imposing a tax on the use of foreign-built yachts there is authority to bring an action in personam against the owner for the recovery; that the tax became due on the 1st day of September next following the passage of the act; that the six months' clause applied only to the charterer and not to the owner of such a yacht; and that that statute does not violate the due-process clause of the fifth amendment.

AD VALOREM IN LIEU OF TONNAGE TAX.—The second paragraph of section 37, tariff act of 1909, giving the owner of a foreign-built yacht an option to pay an ad valorem of 35 per cent in lieu of the annual tonnage tax imposed on the use of such yacht by the first paragraph of the section, is separable from the first paragraph, and its validity is not involved in an action to recover the tonnage tax from the owner of a foreign-built yacht who has not availed of the option.

TREATY—SUBSEQUENT INCONSISTENT STATUTES.—When a treaty is inconsistent with a subsequent act of Congress the latter will prevail. The Constitution does not declare that the law established by a treaty shall never be altered or repealed by Congress; and while good faith may cause Congress to refrain from making any change in such law, if it does so its enactment becomes the law. Although the other contracting power to a treaty may have ground for complaint if Congress passes a law changing the law established by the treaty, every person is still bound to obey the latest law passed. No person acquires any vested right to the continued operation of a treaty.—*Rainey v. U. S.* (U. S.), T. D. 34436; T. D. 32303 (C. C.) modified and affirmed.

YACHT OWNED BY CITIZEN PERMANENTLY RESIDENT IN FOREIGN COUNTRY.—*U. S. v. Goellet* (232 U. S., 293; T. D. 34433) followed to effect that the tax imposed by section 37, tariff act of 1909, does not apply to the use of a foreign-

built yacht owned by a citizen of the United States who was permanently resident and domiciled in a foreign country for more than one year prior to September 1, 1909, and to the levy of such tax.—*U. S. v. Bennett* (U. S.), T. D. 34435.

YACHTS USED OUTSIDE JURISDICTION OF UNITED STATES.—The tax imposed by section 37, tariff act of 1909, applies to the use of a foreign-built yacht owned by a citizen of the United States, although such yacht, for a period of more than one year prior to September 1, 1909, and to the levy of such tax, was used wholly outside of the limits and territorial jurisdiction of the United States.

INTEREST ON TAX.—The United States is entitled to recover interest upon the tax imposed upon the use of foreign-built yachts under section 37, tariff act of 1909.—*U. S. v. Bennett* (U. S.), T. D. 34434.

Where, on bringing into the country a foreign-built yacht, no election is made under the provisions of paragraph 37, tariff act of 1909, to pay an ad valorem duty rather than a tonnage tax, a payment of the ad valorem duty levied on subsequent entry of the yacht would not excuse the payment of a tonnage tax which had previously accrued and become a debt to the Government.—T. D. 35765 (G. A. 7784).

Billings v. U. S. (232 U. S., 261; T. D. 34429) followed to the effect that the tax on the use of foreign-built yachts imposed by section 37, tariff act of 1909, is not an unconstitutional exercise of power by Congress, and it became due for the year 1909 on the 1st day of September, 1909.

PERMANENT RESIDENCE IN FOREIGN COUNTRY.—The tax imposed by section 37, tariff act of 1909, does not apply to the use of a foreign-built yacht owned by a citizen of the United States who was permanently resident and domiciled in a foreign country for more than one year prior to September 1, 1909, and to the levy of such tax.—*U. S. v. Goelet* (U. S.), T. D. 34433.

WHEN DUE—STATUTORY CONSTRUCTION.—Under section 37, tariff act of 1909, imposing a tax on the use of foreign-built yachts owned or chartered for more than six months by citizens of the United States, to be collected annually on September 1, the tax became due on the first day of September next occurring after the act became effective; further, *held*, that the six months' clause relates only to the chartering of the yachts, and the word "annually" indicates continuity, and that the tax is not a sporadic one to cease after a single payment. Where words are used in a statute in their everyday sense and not in a technical one they should be so construed.

ACTUAL USE.—The use of a foreign-built yacht which renders the owner subject to the tax imposed by section 37, tariff act of 1909, is active and actual use and not the potential use arising from the mere fact of ownership.

RETROACTIVE OPERATION OF STATUTE.—The fact that a tax statute operates retroactively does not necessarily cause it to be unconstitutional. *Flint v. Stone Tracy Co.* (220 U. S., 107). The rule that statutes should be construed if possible so as not to operate retroactively does not authorize a judicial reenactment of the statute to save it from acting retroactively if Congress intended it so to do.

TONNAGE TAX—INTEREST.—The Government is entitled to interest on taxes on use of foreign-built yachts under section 37, tariff act of 1909, from the date when the taxes become due, and may maintain an action against the owner or charterer therefor.—*Billings v. U. S.* (U. S.), T. D. 34429; T. D. 32303 (C. C.) modified and affirmed.

Decided on authority of *Billings v. U. S.* (232 U. S., 261; T. D. 34429); 190 Fed., 359 (T. D. 32303) modified and affirmed.—*U. S. v. Billings* (U. S.), T. D. 34430).

NONUSE OF YACHT.—*Billings v. U. S.* (232 U. S., 261; T. D. 34429) followed and distinguished, to the effect that the owner of a foreign-built yacht is not liable for the tax imposed by section 37, tariff act of 1909, if the yacht was not actually used at all during the preceding year.—*Pierce v. U. S.* (U. S.), T. D. 34431).

USE OF YACHT.—Decided on authority of *Pierce v. U. S.* (232 U. S., 290; T. D. 34431), 190 Fed., 359 (T. D. 32303) reversed.—*Pierce v. U. S.* (U. S.), T. D. 34432.

Section 37 of the tariff act of 1909 provides for a tonnage tax of \$7 per ton upon the use of a foreign-built yacht, in lieu of which the owner of such yacht may pay an ad valorem duty of 35 per cent.

It appears that the yacht in question in this case, called *La Rita II*, was brought into the country under entry 15152, September 3, 1912. A tonnage duty was levied upon said yacht, which was ultimately paid by the owner of the yacht. The collector of customs, subsequent to that proceeding, levied an ad valorem duty under the second paragraph of section 37. The importer filed his protest against the payment of the duty, claiming that the law under which it was levied was unconstitutional. It has subsequently been declared constitutional with reference to the tonnage tax; the provision for an ad valorem duty seems not to have been involved. See *Billings v. U. S.* (232 U. S., 261; T. D. 34429), *U. S. v. Billings* (232 U. S., 289; T. D. 34430), *Pierce v. U. S.* (232 U. S., 290; T. D. 34431), *Pierce v. U. S.* (232 U. S., 292; T. D. 34432), *U. S. v. Goelet* (232 U. S., 203; T. D. 34433), *U. S. v. Bennett* (232 U. S., 299; T. D. 34434), *U. S. v. Bennett* (232 U. S., 308; T. D. 34435), and *Rainey v. U. S.* (232 U. S., 310; T. D. 34436).

This protest should be construed as one against the payment of the ad valorem duty of 35 per cent which was assessed. The law appears to provide that in lieu of the tonnage tax the owner may elect to have an ad valorem duty assessed. In case of no election being made, it would be the duty of the collector to levy the tonnage tax, which, having been levied, would exonerate the owner from the payment of the ad valorem duty which appears to have been exacted in this case. He was not liable for this duty, it appearing from the record that the tonnage tax was paid.—Ab. 36858 (T. D. 34908).

CUSTOMS REGULATIONS—JUDICIAL NOTICE.—Federal courts may take judicial notice of customs regulations.

DOMICILE—RESIDENCE.—The terms "domicile" and "residence" are not synonymous. Domicile implies residence plus animus manendi.

FOREIGN BUILT.—A foreign-built yacht, within the meaning of section 37, tariff act of 1909, imposing a tonnage tax on the use of foreign-built yachts by United States citizens, is one originally constructed outside the United States; and, though changed, altered, and repaired, it remains foreign-built if the changes, alterations, and repairs do not change its identity so that, were it a vessel built in the United States, it might be rechristened without application to the Commissioner of Navigation.

PRIVILEGE OF USE.—The tonnage tax imposed by section 37, tariff act of 1909, on the use of foreign-built yachts by United States citizens, is directed against the privilege of use, and therefore assessable to and collectible from the personal user.

NOTICE TO TAXPAYER.—In enforcing the provisions of section 37, tariff act of 1909, imposing a tonnage tax on the use of foreign-built yachts, which "shall be levied and collected annually by the collector of customs of the district nearest the residence of the managing owner," the collector must do something by way of apprising the person who is called upon to pay the tax; and one particular

collector, namely, the one of the district nearest the residence of the managing owner, being charged with the duty of levying and collecting the tax, no other collector can lawfully perform it.

TONNAGE OF REBUILT YACHTS.—In estimating the tonnage tax imposed by section 37, tariff act of 1909, on the use of foreign-built yachts, it is proper, in the case of yachts whose tonnage has been increased in rebuilding, to compute the tax on the basis of the increased tonnage.—*U. S. v. Billings (C. C.)*, T. D. 32304.

FEDERAL TAXING POWER—CONSTITUTIONAL LIMITATIONS.—There are no limitations upon the right of Congress to discriminate in selecting the subjects of taxation so long as it follows the particular constitutional provisions relating to the levying of taxes.

DUE PROCESS OF LAW.—Section 37, tariff act of 1909, imposing a tonnage tax upon the use of foreign-built yachts by citizens of the United States, is in accord with all the special constitutional limitations upon the taxing power, and can not, by reason of discriminating between foreign-built and domestic-built yachts, be held to violate the due process of law provision of the fifth amendment to the Constitution.

TAXATION OF PROPERTY OUTSIDE TERRITORIAL JURISDICTION.—The United States Government having power to afford protection to the persons and property of its citizens abroad, its taxing power is not limited by the rule that property outside the jurisdiction of a State may not be subjected to taxation there. Congress has power to tax foreign-built yachts owned by citizens and located in foreign countries.

CONSTRUCTION.—The presumption is that a tax law applies only to subjects within the territorial jurisdiction; and section 37, tariff act of 1909, levying a tonnage tax on the use of foreign-built yachts by United States citizens, does not evidence any intention on the part of Congress to tax the use of such yachts in foreign waters, either by resident or nonresident citizens.

OWNED YACHTS—CHARTERED YACHTS—SIX MONTHS' LIMITATION.—The six months' limitation in section 37, tariff act of 1909, which provides that a tonnage tax "shall be levied and collected annually on the 1st day of September upon the use of every foreign-built yacht now or hereafter owned or chartered for more than six months," applies to chartered yachts only.

ACTUAL USE—PRIVILEGE OF USE.—The tonnage tax imposed by section 37, tariff act of 1909, on the use of foreign-built yachts was intended to cover the privilege of their use, and actual use is not a prerequisite to liability for the tax. It was the intention of Congress that such tax should be levied on the 1st day of every September following the enactment of the statute.

TREATIES—SUBSEQUENT INCONSISTENT STATUTES.—When a treaty is inconsistent with a subsequent act of Congress the latter will prevail; and British-built yachts are therefore not exempt from the tonnage tax imposed by section 37, tariff act of 1909, upon the use by United States citizens of foreign-built yachts, by virtue of the treaty of 1815 with Great Britain, which provided that no higher or other duties or charges should be imposed in the United States upon British vessels than those imposed upon vessels of the United States.

TONNAGE TAXES—HOW ENFORCED.—An action in the nature of debt will lie against the owners or charterers of foreign-built yachts to enforce the collection of the tonnage tax imposed upon the use of such yachts by section 37, tariff act of 1909.

REVENUE ACT—SENATE AMENDMENT—CONSTITUTIONALITY.—Section 37, tariff act of 1909, imposing a tax upon the use of foreign-built yachts, is not void by reason of Article I, section 7, of the Constitution, which requires that "all bills

for raising revenue shall originate in the House of Representatives," the section having been proposed by the Senate as an amendment to a bill for raising revenue which originated in the House.—U. S. v. Billings (C. C.), T. D. 32303.

Jurisdiction of General Appraisers.—Where a tonnage duty is assessed by the collector on a vessel under said section 37, tariff act of 1909, the board has no jurisdiction of a protest claiming error in such assessment, a vessel not being imported merchandise within the meaning of section 1 of said tariff act or of section 14 of the customs administrative act, as amended by said act of 1909.

But where a duty prescribed by said section at 35 per cent ad valorem is assessed, the board is invested with jurisdiction to pass on the question of its correctness, such assessment being an exaction other than a duty on imported merchandise and not a tonnage duty.—T. D. 30354 (G. A. 6981).

Yachts—Sections 4214 and 4218, Revised Statutes, Amended.—The Secretary of Commerce and Labor states that the amendment to section 4214 extends to the vessels mentioned therein navigating the Great Lakes the privilege of proceeding to a foreign country without clearance, which privilege was formerly extended to vessels on the seaboard only.

He further states that the amendment to section 4218 relieves every yacht of not more than 15 tons gross, visiting a foreign country, from entry at the customhouse on returning to the United States, provided there are no dutiable articles on board, but requires the delivery to the customs officer at the port or place in the United States at which such yachts or vessels shall arrive of a manifest of all dutiable articles brought in them.

AN ACT To amend sections forty-two hundred and fourteen and forty-two hundred and eighteen of the Revised Statutes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections forty-two hundred and fourteen and forty-two hundred and eighteen of the Revised Statutes be, and the same are hereby, amended to read as follows:

"SEC. 4214. The Secretary of Commerce and Labor may cause yachts used and employed exclusively as pleasure vessels or designed as models of naval architecture, if built and owned in compliance with the provisions of sections forty-one hundred and thirty-three to forty-one hundred and thirty-five, to be licensed on terms which will authorize them to proceed from port to port of the United States and to foreign ports without entering or clearing at the customhouse; such license shall be in such form as the Secretary of Commerce and Labor may prescribe. Such vessels, so enrolled and licensed, shall not be allowed to transport merchandise or carry passengers for pay. Such vessels shall have their name and port placed on some conspicuous portion of their hulls. Such vessels shall, in all respects, except as above, be subject to the laws of the United States, and shall be liable to seizure and forfeiture for any violation of the provisions of this title."

"SEC. 4218. Every yacht, except those of fifteen gross tons or under, visiting a foreign country under the provisions of sections forty-two hundred and fourteen, forty-two hundred and fifteen, and forty-two hundred and seventeen of the Revised Statutes shall, on her return to the United States, make due entry at the customhouse of the port at which, on such return, she shall arrive: *Provided*, That nothing in this act shall be so construed as to exempt the master or person in charge of a yacht or vessel arriving from a foreign port or place with dutiable articles on board from reporting to the customs officer of the United States at the port or place at which said yacht or vessel shall arrive,

and deliver in to said officer a manifest of all dutiable articles brought from a foreign country in such yachts or vessels."

SEC. 3. That all acts and parts of acts not consistent herewith are hereby repealed.

Approved, August 20, 1912.—Dept. Order (T. D. 32869).

Instructions as to the collection of the sums equivalent to the tonnage tax, or the duty in lieu thereof, on foreign-built yachts, provided by section 37 of the tariff act of August 5, 1909.—Dept. Order (T. D. 29962).

Foreign-Built American-Owned Yachts.—Regulations as to entries, clearances, payment of tonnage tax, light money, oaths as to ownership, etc.—Dept. Order (T. D. 22547).

Foreign-Built Yachts Owned, Chartered, or Used by Citizens of the United States.

AN ACT For the protection of yacht owners and shipbuilders of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-two hundred and sixteen of the Revised Statutes be, and is hereby, amended to read as follows:

"SEC. 4216. Yachts belonging to a regularly authorized yacht club of any foreign nation which shall extend like privileges to the yachts of the United States shall have the privilege of entering or leaving any port of the United States without entering or clearing at the customhouse thereof or paying tonnage tax: *Provided*, That the privileges of this section shall not extend to any yacht built outside of the United States and owned, chartered, or used by a citizen of the United States, unless such ownership or charter was acquired prior to the passage of this act."

SEC. 2. That section eleven of an act entitled "An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes," approved June nineteenth, eighteen hundred and eighty-six, so far as the same exempts any yacht built outside of the United States and owned, chartered, or used by a citizen of the United States, from the payment of tonnage taxes, is hereby repealed.

DEPARTMENT OF STATE, *February 8, 1897.*

A true copy.—Dept. Order (T. D. 18292).

[NOTE BY THE DEPARTMENT OF STATE.—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the House of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.]

1897 **Sec. 11.** That no article of imported merchandise which shall copy or simulate the name or trade-mark of any domestic manufacture or manufacturer, or which shall bear a name or mark which is calculated to induce the public to believe that the article is manufactured in the United States, shall be admitted to entry at any customhouse of the United States. And in order to aid the officers of the customs in enforcing this prohibition any domestic manufacturer who had adopted trade-marks may require his name and residence and a description of his trade-marks to be recorded in books which shall be kept for that purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the department facsimiles of such trade-marks; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of the customs.

1894 **SEC. 6.** That no article of imported merchandise which shall copy or simulate the name or trade-mark of any domestic manufacture or manufacturer shall be admitted to entry at any customhouse of the United States. And in order to aid the officers of the customs in enforcing this prohibition any domestic manufacturer who has adopted trade-marks may require his name and residence and a description of his trade-marks to be recorded in books which shall be kept for that purpose in the Department of the Treasury under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the department facsimiles of such trade-marks; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of the customs.

1890 **SEC. 7.** That on and after March first, eighteen hundred and ninety-one, no article of imported merchandise which shall copy or simulate the name or trade-mark of any domestic manufacture or manufacturer, shall be admitted to entry at any customhouse of the United States. And in order to aid the officers of the customs in enforcing this prohibition any domestic manufacturer who has adopted trade-marks may require his name and residence and a description of his trade-marks to be recorded in books which shall be kept for that purpose in the Department of the Treasury under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the department facsimiles of such trade-marks; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of the customs.

1883 **SEC. 2496.** No watches, watchcases, watch movements, or parts of watch movements, or any other articles of foreign manufacture, which shall copy or simulate the name or trade-mark of any domestic manufacture, shall be admitted to entry at the customhouses of the United States, unless such domestic manufacturer is the importer of the same. And in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer who has adopted trade-marks may require his name and residence and a description of his trade-marks to be recorded in books which shall be kept for that purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the department facsimiles of such trade-marks; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of the customs.

Trade-Marks.—The attention of officers of the customs and others is invited to the provisions of section 27 of the act approved February 20, 1905, effective April 1, 1905.—Dept. Order (T. D. 29975).

The attention of officers of the customs and others is invited to the provisions of section 3 of the act approved May 4, 1906, effective July 1, 1906.—Dept. Order (T. D. 27416).

The attention of officers of the customs and others is invited to the provisions of section 27 of the act approved February 20, 1905, effective April 1, 1905.—Dept. Order (T. D. 26198).

Sec. 14. That the sixteenth section of an Act entitled "An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," approved June twenty-sixth, eighteen hundred and eighty-four, be amended so as to read as follows:

1897 **"SEC. 16.** That all articles of foreign or domestic production needed and actually withdrawn from bonded warehouses and bonded manufacturing warehouses for supplies (not including equipment) of vessels of the United States engaged in foreign trade, or in trade between the Atlantic and Pacific ports of the United States, may be so withdrawn from said bonded warehouses, free of duty or of internal-revenue tax, as the case may be, under such regulations as the Secretary of the Treasury may prescribe; but no such articles shall be landed at any port of the United States."

SECTION III, TARIFF ACT OF 1913.

A. That the Act entitled "An Act to simplify the laws in relation to the collection of the revenues," approved June tenth, eighteen hundred and ninety, as amended, be further amended to read as follows:

1913

"B. That all merchandise imported into the United States shall, for the purpose of this Act, be deemed and held to be the property of the person to whom the same is consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof; and in case of the abandonment of any merchandise to the underwriters the latter may be recognized as the consignee."

SEC. 28. That the Act entitled "An Act to simplify the laws in relation to the collection of the revenues," approved June tenth, eighteen hundred and ninety, as amended, be further amended to read as follows:

1909

"SEC. 1. That all merchandise imported into the United States shall, for the purpose of this Act, be deemed and held to be the property of the person to whom the same is consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof; and in case of the abandonment of any merchandise to the underwriters the latter may be recognized as the consignee."

CUSTOMS ADMINISTRATIVE ACT OF JUNE 10, 1890, AS AMENDED BY ACT OF JULY 24, 1897.

AN ACT To simplify the laws in relation to the collection of the revenues.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all merchandise imported into the United States shall, for the purpose of this Act, be deemed and held to be the property of the person to whom the merchandise may be consigned; but the holder of any bill of lading consigned to order and indorsed by the consignor shall be deemed the consignee thereof; and in case of the abandonment of any merchandise to the underwriters the latter may be recognized as the consignee.

1890

SEC. 30. That this Act shall take effect on the first day of August, eighteen hundred and ninety, except so much of section twelve as provides for the appointment of nine general appraisers, which shall take effect immediately.

Approved, June 10, 1890.

AN ACT To amend section three thousand and fifty-eight of the Revised Statutes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section three thousand and fifty-eight of the Revised Statutes be amended to read as follows:

"SEC. 3058. All merchandise imported into the United States shall, for the purpose of this title, be deemed and held to be the property of the person to whom the merchandise may be consigned; but the holder of any bill of lading consigned to order and property indorsed shall be deemed the consignee thereof; and in case of the abandonment of any merchandise to the underwriters, the latter may be recognized as the consignee; and under such regulations as the Secretary of the Treasury may prescribe, merchandise saved from a vessel wrecked or abandoned at sea, or on or along the coasts of the United States, and promptly brought into a port of the United States by or in possession of the salvors of the same, can, for the purpose of its title, be regarded as the property of such salvors, and the valuation thereof and payment of duties thereon can be made accordingly and with due reference to the condition of the said

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merchandise as thus saved and the necessities of the case: *Provided, however, That such bringing in by salvors shall be in good faith and without intent to evade the just payment of duty: And provided further, That nothing herein contained shall be so construed as to prejudice in any other respect the rights of property, or of or through abandonment or allowance of the owner, or any other person interested in said merchandise.*"

Approved, February 23, 1887.

DECISIONS UNDER THE ACT OF 1909.

Unauthorized Importation—Liability of Consignee for Duties.—The protestant ordered from Holland certain bulbs. When the shipment arrived there was found with it a bottle of gin. The consignee, i. e., the protestant in this case, upon receiving the invoice refused to enter the gin, claiming it to be an unauthorized shipment. The collector, notwithstanding the fact that the merchandise had not been entered, assessed duty upon the gin as if it were a package of 12 bottles under paragraphs 200 and 207 of the tariff act of 1909. No man can be compelled to receive and pay for merchandise he did not order or does not want; nor can he be compelled to receive and pay the duty on merchandise which he did not order and does not want though it is sent to him free of cost. The protest is therefore sustained and the collector directed to reliquidate the entry, omitting therefrom the duty on the gin, following the direction of the customs regulations in this respect. See Colpas case, G. A. 6891 (T. D. 29663).—Ab. 37631.

Customs Duties on Salvaged Cargo.—Where a cargo is salvaged from a foreign ship, the salvors have the prior right to be paid salvage before any duties can be allowed the United States.

The United States has an equitable claim for duties on all such salvaged goods as were sold and entered into the consumption of the country. No duties can be collected on such salvaged goods as were exported.—Albury et al. v. Cargo of the *Lugano* (D. C.), T. D. 34866.

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Stoppage in Transitu.

GENERAL-ORDER GOODS.—Goods in possession of the customs authorities under general order, for which no entry has been made, freight and duty being unpaid, are in the custody of the carrier and subject to the vendor's right of stoppage in transitu.

BONDED-WAREHOUSE GOODS.—Goods for which entry has been made and which remain in bonded warehouse, freight paid but duty unpaid, are in possession of the buyer, and are not subject to the vendor's right of stoppage in transitu.—In re Talbot & Poggi (D. C.), T. D. 31733.

Liability of Consignees for Duties.

CONSIGNEE AS OWNER.—The consignee of imported merchandise named in an invoice is deemed for tariff purposes to be the owner of the merchandise and liable as such for the lawful duties assessed.

AGENCY OF CONSIGNEE.—Where such consignee voluntarily enters the merchandise, pays duty, and makes declaration in the usual forms prescribed by customs regulations, he is estopped from pleading his agency for the ultimate consignee as against the Government so as to exempt him from liability for such duty.

UNAUTHORIZED IMPORTATION.—Where goods are shipped to this country by a foreign consignor, without authority from such ultimate consignee, the latter may refuse to recognize the shipment, or to make entry of such goods, and thus

relieve himself from liability to pay duties on the importation.—T. D. 29663 (G. A. 6891).

Goods Consigned Without Authority—Presents.

JURISDICTION OF BOARD OF GENERAL APPRAISERS.—The jurisdiction of the Board of General Appraisers extends over all articles coming into the United States from the Philippine Islands since March 8, 1902, the provisions of the act of that date having been held to be valid and constitutional.

WHEN CONSIGNEE LIABLE FOR DUTY.—While a person may justly claim he is not the importer of goods which may have been consigned to him without his authority, and which he declines to receive or enter on this account, nevertheless, where he does receive imported goods and makes entry of them he would be liable for the duty, although such goods may have been presented to and not purchased by him.

VALIDITY AND POLICY OF ACT OF CONGRESS.—The validity of an act of Congress can be assailed in the courts only on the ground that it violates some provision of the Federal Constitution, the policy of the law or its alleged injustice being no ground for its assailment.

REMEDY OF IMPORTER.—The ascertainment of the market value of imported merchandise can not be challenged by protest, but only by calling for a reappraisement under section 13 of the customs administrative act.—T. D. 28740 (G. A. 6717).

Liability of Consignee—Goods Consigned to Railroad Agent.—Merchandise imported by railroad was consigned by one agent of the railroad company to another agent, and the latter made entry at the customhouse in his own name as consignee; each was the authorized agent of the company; and all parties concerned knew that they were acting for the company, though in some of their transactions they did not describe themselves as agents, but used their individual names. *Held*, that the railroad company was the consignee of the merchandise and therefore, under section 1, customs administrative act of 1890, was liable for the payment of the duties, notwithstanding that the company was not the actual owner of the property.—U. S. v. Mexican International Railroad Co. (C. C. A.), T. D. 28182.

Liability for Duties—Customhouse Broker Declaring as Consignee.—Under the provision in section 1, customs administrative act of June 10, 1890, that "all merchandise imported into the United States shall for the purposes of this act be deemed and held to be the property of the person to whom the merchandise may be consigned," *Held*, that a customhouse broker who makes entry for imported merchandise, declaring under oath that he is the consignee, may not as against the Government deny that he is the consignee for the purpose of avoiding the payment of the duty to which the merchandise is subject.—U. S. v. Vandiver (D. C.), T. D. 26036.

Bills of Lading.—Bill of lading or bond to produce same required upon entry if such is in existence. It appears that it is not the practice of some transportation companies and express companies to issue bills of lading for merchandise transported by them, and it would be an obvious injustice to refuse to permit entry to be made until the bill of lading should be presented where no such bill of lading is in existence.—Dept. Order (T. D. 25937).

Liability of Consignees for Duty on Unauthorized Shipment.

MERCHANDISE NOT "IMPORTED."—Certain merchants ordered for importation a quantity of merchandise of a kind not subject to duty. In response to the order a shipment was consigned to them of an article of a different character, which was subject to a high rate of duty, and which they refused to accept or

to make themselves responsible for in any way. *Held*, that there was no colorable authority for the shipment of the merchandise, and that the consignees should not be considered as having "imported" the merchandise within the meaning of section 1, customs administrative act of June 10, 1890, providing that all merchandise "imported" into the United States shall for the purposes of the act "be deemed and held to be the property of the person to whom the merchandise may be consigned."

CONSIGNMENT WITHOUT CONSENT OF CONSIGNEE.—Where merchandise is shipped to parties in the United States, which is of a different character from that ordered, it is a consignment made without the consent of the consignees, within the meaning of article 1231, Customs Regulations, 1899, prescribing that when the proceeds from the sale of unclaimed merchandise are not sufficient to pay the duties and other charges thereon, "the consignees are liable for such duties, unless it be shown that the consignment was made without their consent."

OBLIGATION OF CONSIGNEE TO MAKE ENTRY.—Where merchandise is shipped to parties in the United States without their authority, they are under no obligation, in order to free themselves from liability for duty, to make entry of the merchandise or to take possession of it for any purpose.—*U. S. v. O'Neill* (C. C. A.), T. D. 25313.

Payment of Duties by Carrier—Carrier's Lien.—In construing section 2992, Revised Statutes (U. S. Comp. Stat., 1901, p. 1962), relating to the conveyance of imported merchandise by bonded carriers, *Held*, that the lien of the United States for duties on the merchandise passes to the carrier when the latter pays the duties in order to gain possession of the merchandise and forward it to its destination.—*Wabash Railroad Co. v. Pearce* (U. S.), T. D. 25122.

Liability of Consignee.—The consignee of imported goods is deemed the owner for the purpose of the collection of the duties thereon under section 3058, Revised Statutes, as amended by the act of February 23, 1887 (24 Stat., 415; U. S. Comp. Stat., 1901, p. 2005); and it is no defense to an action against the consignee for such duties that the consignor or any other party who, at the request or with the consent of the consignee, procured the importation, failed to obey the latter's instructions or to comply with the terms of the contract between them. (See sec. 1, customs administrative act of June 10, 1890.)

It seems that a stranger can not, by consigning goods to anyone who has not in any way authorized or induced him to do so, charge such a consignee, even in favor of the United States, with liability for the duties upon the importation.—*U. S. v. Bishop* (C. C. A.), T. D. 25093.

Delivery to Consignee Without Bill of Lading—Liability of Collector.—In construing section 1, customs administrative act of June 10, 1890, providing that "all merchandise imported into the United States shall for the purposes of this act be deemed to be the property of the person to whom the merchandise may be consigned; but the holder of any bill of lading consigned to order and indorsed by the consignor shall be deemed the consignee thereof," *Held*, that, where certain parties had entered imported merchandise on a pro forma invoice and were named as consignees in the ship's manifest, and had sworn that they were the owners of the goods and paid the duties, but without producing the bill of lading, the collector of customs, where there was no hint of adverse interests, was justified in delivering the merchandise to them, and was not liable to a transferee of the bill of lading who did not present it until after such delivery.—Stricken from docket of Supreme Court for want of prosecution (199 U. S., 614; T. D. 27430).—*Derobert v. Stranahan* (C. C.), T. D. 25071.

Bills of Lading and Invoices.—Original bills of lading and importers' duplicate invoices should be retained on the files of the customhouse.—Dept. Order (T. D. 24208).

Entry of Goods by Receiver of Insolvent Consignees.—A receiver appointed by a court of competent jurisdiction, and having the requisite authority, deemed and held to be, for customs purposes, the legal representative of an insolvent consignee or importer, and, therefore, capable of making entry of imported merchandise consigned to a firm which has become insolvent, the situation of a receiver being, by operation of law, analogous to that of an assignee under a voluntary assignment.—Dept. Order (T. D. 19667).

Delivery of Goods by Customs Officers to Assignee of Importer.—It is the practice of this department to consider the assignee as the legal representative of the importer, and succeeding to all rights and interest for customs purposes in the property consigned to his assignor.—Dept. Order (T. D. 18242).

Bills of Lading Drawn to Order and Indorsed by Shipper.—A bill of lading drawn "to order," as understood in commercial transactions, means a bill of lading drawn to the order of the shipper. Such a bill of lading when indorsed by the shipper is negotiable, and may be accepted when presented on entry by any person holding the same.—Dept. Order (T. D. 16034).

Delivery of Goods to Person Holding Bill of Lading.—The Solicitor of the Treasury advises the department that he concurs with the views of the collector of customs, viz, under the regulations and the law he is required to permit the entry and withdrawal of said goods to any person presenting the proper bill of lading, notwithstanding the notification of the attorneys, who claim that the goods, being in transit and not having been delivered to the consignees, are still subject to the claim of the consignors.—Dept. Order (T. D. 14194).

Indorsed Bill of Lading.—The right to make entry passes to indorsee of a bill of lading.—Dept. Order (T. D. 13259).

Only One Consignee Can Be Recognized.—Entry of portion of shipment by consignee other than that named in bill of lading refused.—Dept. Order (T. D. 11818).

Consignee, Not the Owner.—Section 1, act of June 10, 1890, does not prohibit the consignment of goods to another than the real owner.—*Burke v. Davis* (C. C.), 63 Fed. Rep., 456.

Mere Consignee Can Not Declare as Owner.—Section 1 of the act of June 10, 1890, providing that all imported merchandise shall be the property of the consignee, was intended to prevent frauds upon the Government arising from collusive transfers, and confers no right upon a mere consignee to make a declaration as "owner," but he must make the declaration as consignee, and in the declaration must state truly the name of the owner.—*U. S. v. Fawcett* (C. C.), 86 Fed. Rep., 900.

Customs Brokers as Consignees.—Customs brokers, to whom goods are consigned for another, are consignees under this section and are liable for additional duties assessed because of undervaluation.—*Baldwin v. U. S.*, 113 Fed. Rep., 217.

Unauthorized Entry.—Where a firm ordered cotton waste, which is free of duty, and the foreign shippers sent wool waste, which is dutiable, and a railway agent at the Canadian frontier made an unauthorized entry of the goods, naming the firm as consignees, it was held that they were not liable as con-

signees under this section for a deficiency in duties resulting from a sale of the goods consequent on the firm's refusal to receive them.—*U. S. v. O'Neill*, 129 Fed. Rep., 909; 122 Fed. Rep., 547, affirmed.

DECISIONS UNDER EARLIER STATUTES PERTAINING TO SAME SUBJECT MATTER.

Indorsees of Bills of Lading.—The opinion of the Solicitor (as contained in department's decision of December 2, 1886, Synopsis 7890) and the legislation of February 23, 1887 (see Synopsis 8105), recognize the indorsee of a bill of lading as the person entitled to make entry, irrespective of his position as original or subsequent indorsee.—Dept. Order (T. D. 8807).

Entry on Unindorsed Bill of Lading—Collector's Responsibility.—In the absence of any indorsement on the bill of lading, the shippers are the only persons who are entitled to make entry at the customhouse and receive possession of the merchandise from the collector.

Should the collector allow entry by persons not the consignees as prescribed in the statute, he would be responsible under the law in damages to anyone subsequently producing a proper bill of lading, the responsibility resting solely with the collector.—Dept. Order (T. D. 8202).

Bills of Lading Stamped "Not Negotiable."—As there is nothing in the law or regulations to invalidate an entry by the proper holder of a genuine bill of lading, whether negotiable or not, the department is of opinion that no risk is incurred by the collector in accepting not negotiable bills of lading as sufficient for the purposes of entry without inquiring into the question whether any other bills of lading for the same merchandise have or have not been issued by the carriers.—Dept. Order (T. D. 7955).

Bills of Lading.—Certain questions having arisen as to the application of department's circular of September 2, last (Synopsis 7732), the same were duly referred to the Solicitor of the Treasury for an expression of his views thereon, and his reply is herewith appended, from which it will be seen—

First. That the terms "or order" and "or assigns" in bills of lading are equivalent as to the right of an indorsee to make entry thereunder, and that the holder, by indorsement on a bill of lading drawn in either form, may be considered as the consignee.

Second. That the provisions of section 3058, Revised Statutes, do not restrain the indorsee or assignee of a bill of lading duly held by him from the right to make entry.

Third. That the collector is protected, as to any rival claims to ownership, by the acceptance of the duly indorsed bill of lading; and

Fourth. That indorsements of duly constituted agents or attorneys (residing in this country) or nonresident bankers or consignees, to whose order the merchandise may have been consigned, are sufficient for purposes of entry.—Dept. Order (T. D. 7890).

Entry of Imported Merchandise.—Where merchandise is consigned on the bill of lading to a certain person, and not to his order, that person, and none other, can be permitted to make entry of the goods referred to therein, and goods consigned on the bill of lading to a foreign bank can not under the law be entered by a branch of said bank in this country or otherwise.—Dept. Order (T. D. 7810). Note T. D. 7771.

Entries of Imported Merchandise.—On and after January 1, 1887, the practice heretofore existing under department's instructions of October 11, 1878 (Synopsis 3741), of permitting parties who present themselves with invoices and bills of lading indorsed to them by persons named therein, or in blank, to

make entry in their own names as owners, and also of permitting entry by parties who appear to have been the real purchasers abroad, but to whom the merchandise was not consigned by the bill of lading, will be discontinued, and entries will only be received from parties in whose name the merchandise is consigned by the bill of lading, or who appear to be the rightful holders of bills of lading drawn "to order."—Dept. Order (T. D. 7732).

Merchandise Sold at Sea.—Where goods are sold while at sea the vendee acquires, without actual possession, a constructive possession sufficient to maintain trespass against a wrongdoer.

Where goods are imported in a ship, after such sale and before they are unladen an inspector is put on board, his custody thereof to secure the lien of the United States for duties is not a divestment of the title and possession of the vendee as against a wrongdoer.—*Howland v. Harris*, 4 Mason, 497; 12 Fed. Cas., 734.

Merchandise Unlawfully Detained by Collector.—Trove will lie against a collector who unlawfully detains the goods of an importer, and it is no defense that the collector acted under instructions of the Secretary.—*Fiedler v. Maxwell*, 2 Blatchf., 552; 8 Fed. Cas., 1194.

Nationality.—A merchant having a fixed residence at the place of his birth and carrying on business there does not acquire a foreign commercial character by occasional visits to another country.—*The Nereide*, 9 Cranch, 388.

Ownership of Consigned Goods in Time of War.—If a British merchant purchase with his own funds two cargoes of goods in consequence of, but not in exact conformity with, the orders of an American house and ship them to America, giving to the American house an option within 24 hours after the receipt of his letter to take or reject both cargoes, and if they give notice within the time that they will take one cargo, but will consider as to the other; this puts it in the power of the British merchant either to cast the whole upon the American house or to resume the property and make them accountable for that which came to their hands, and therefore the right of property in the cargo not accepted does not in transit vest in the American house, but remains in the British subject, and is liable to condemnation, he being an enemy.—*The Frances*, 9 Cranch, 183.

When goods are sent upon the account and risk of the shipper, the delivery to the master is delivery to him as the agent of the shipper, not of the consignee; and it is competent for the consignor at any time before actual delivery to the consignee to countermand it and thus prevent the consignee's lien from attaching.—*The Frances*, 8 Cranch, 418.

Goods shipped by a British to an American house (partly in conformity with orders and partly without orders), who had an option to accept or reject the whole invoice in a limited time, remain the property of the shippers until the election be made to accept them.

An intention of the consignors of goods to vest the right of property in the consignee is not sufficient to effect such a change of property until the goods are received by the consignee or some evidence is given of his agreement to take them on his own account; until that time the goods are at the risk of the shippers; and if they are enemies the goods, if captured, are good prize; and this though the consignee were the agent of a third person who had directed him to order the goods, unless it appears that he actually did order them.—*The Frances*, 8 Cranch, 354, 359.

Where goods were shipped from an enemy's country in pursuance of orders from this country received before the declaration of war, but previous to the execution of the orders, the shippers became embarrassed and assigned the

goods to certain bankers to secure advances made by them, with a request to the consignee to remit the amount to them (the bankers), and they also repeated the same request, the invoice being for account and risk of the consignees, but stating the goods to be then the property of the bankers, it was held that the goods having been purchased and shipped in pursuance of orders from the consignees, the property was originally vested in them and was not divested by the intermediate assignment, which was merely intended to transfer the right to the debt due from the consignees.—*The Mary & Susan*, 1 Wheat., 25.

Ownership of Consigned Goods.—If the shipper of goods sends with them an offer in writing to the consignee to become jointly interested in the consignment, until the offer is accepted, the consignor is the sole owner.—*The Venus*, 8 Cranch, 253.

Rights of Importer.—The importer has such a right of possession as general owner that after he has duly offered to enter the goods and pay the duties he may maintain an action of trespass for the wrongful taking thereof.

A consignment of a homeward cargo being "to order," the plaintiffs, who were indorsees of the bills of lading, had a right to enter the goods under sections 36 and 62, act of 1799.—*Conard v. Pacific Insurance Co. of New York*, 6 Pet., 262.

Unpaid Duties.—Under section 36, act of 1799, consignees are authorized to enter goods and give bonds for duties. In such case the United States have no remedy over against the owner, for whom the consignee acts, if the duties are not paid.—*Knox v. Devens*, 5 Mason, 380; 14 Fed. Cas., 801.

1913 C. That all invoices of imported merchandise shall be made out in the currency of the place or country from whence the importations shall be made, or, if purchased, or agreed to be purchased, in the currency actually paid, agreed upon, or to be paid therefor, shall contain a correct, complete, and detailed description of such merchandise and of the packages, wrappings, or other coverings containing it, and shall be made in triplicate or in quadruplicate in case of merchandise intended for immediate transportation without appraisement, and signed by the person owning or shipping the same, if the merchandise has been actually purchased, or price agreed upon, fixed, or determined, or by the manufacturer or owner thereof, if the same has been procured otherwise than by purchase, or agreement of purchase, or by the duly authorized agent of such purchaser, seller, manufacturer, or owner.

1909 SEC. 28. Subsec. 2: That all invoices of imported merchandise shall be made out in the currency of the place or country from whence the importations shall be made, or, if purchased, in the currency actually paid therefor, shall contain a correct, complete, and detailed description of such merchandise, and of the packages, wrappings, or other coverings containing it, and shall be made in triplicate or in quadruplicate in case of merchandise intended for immediate transportation without appraisement, and signed by the person owning or shipping the same, if the merchandise has been actually purchased, or by the manufacturer or owner thereof, if the same has been procured otherwise than by purchase, or by the duly authorized agent of such purchaser, seller, manufacturer, or owner.

1890 SEC. 2. That all invoices of imported merchandise shall be made out in the currency of the place or country from whence the importations shall be made or if purchased in the currency actually paid therefor, shall contain a correct description of such merchandise, and shall be made in triplicate or in quadruplicate in case of merchandise intended for immediate transportation without appraisement, and signed by the person owning or shipping the same, if the merchandise has been actually purchased, or by the manufacturer or owner thereof, if the same has been procured otherwise than by purchase, or by the duly authorized agent of such purchaser, manufacturer, or owner.

DECISIONS UNDER THE ACT OF 1913.

Currency.—The goods were purchased in the open market in Holland for 2,207.40 florins. Upon arrival of the diamonds and examination by the Government a private memorandum was found expressing a value in francs of 5,259 francs. The merchandise was invoiced in florins. The examiner upon finding this memorandum, and believing the price mentioned therein to be the market value of the merchandise, increased the entered value to that amount in its equivalent in florins.

Merchandise must be invoiced in the currency of the place or country from whence it is exported, and the appraisement thereof, or ascertainment of its market value, in the same currency. The record amply justifies the conclusion that the action of the appraiser was largely, if not wholly, based not upon the market value of the merchandise but upon the value of the franc. This was error.—T. D. 35416 (G. A. 7725).

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Spanish Gold—Cuban Invoices.—There is no penalty for the failure to comply with section 2 of the act of June 10, 1890, which provides that all invoices of imported merchandise shall be made in the currency of the place or country from which the importation shall be made, or if purchased in the currency actually paid therefor, except the refusal of the collector to allow the entry of goods on such an invoice.—T. D. 26515 (G. A. 6083).

Entry on Invoice Known to be Imperfect.—Entry was made on an invoice which the importers knew to be imperfect in a material particular, in that it stated that the maker of the invoice was the seller of the goods when he was in fact the agent of the purchaser. Against a liquidation which, on the ground that a vender could not charge a commission in any proper sense, included a so-called commission in the total invoice value, the importers protested, alleging and proving that the maker of the invoice was not the vender of the goods but was their agent to whom they paid a bona fide commission. *Held*, that they were estopped from denying the correctness of the invoice on which the entry was made, having sworn to the best of their knowledge and belief it was in all respects true and was made by the person by whom it purported to be made when they had knowledge that such was not the case.—T. D. 24152 (G. A. 5254).

Entry was made on an invoice which the importers knew to be imperfect in a material particular, in that it stated that the merchandise was imported from London, England, whereas in fact it came from Portugal. They did not offer to give bond for the production of a corrected invoice, nor did they obtain any corrected invoice until after the collector had liquidated the entry. Against the liquidation they filed a protest, claiming that the merchandise was imported from Portugal, and subject to the benefits of the commercial agreement between the United States and Portugal. In support of this claim, they produced before the Board of Classification a corrected consular invoice, certified at Oporto, Portugal, and asked that this be substituted for the invoice on which the entry had been made. *Held*, that they were estopped from denying the correctness of the original invoice on which entry was made, having sworn that it was in all respects correct and true, when they had full knowledge that such was not the case.—T. D. 23754 (G. A. 5152).

Relief Against Assessment of Duty on Excess.—The appraiser reported an excess over the invoice quantity which the importer denies. The importer should have asked the collector to have a reexamination while the goods were in the possession of the Government or in the presence of an officer.—T. D. 14638 (G. A. 2396).

Importers Held to the Statements of Their Invoices.—Goods invoiced as printed cotton cambrics and claimed to be printed cotton handkerchiefs. Importers held to statements in invoice.—T. D. 13222 (G. A. 1643).

DECISIONS UNDER EARLIER STATUTES PERTAINING TO THE SAME SUBJECT MATTER.

Actual Market Value.—Under the act of March 3, 1863, section 1, the invoice of goods, which are procured otherwise than by purchase, must state their actual market value at the time and place, when and where they are procured or manufactured.

Actual market value is the price at which the owner or manufacturer of goods holds them for sale in the ordinary course of trade.—Twelve Hundred and Nine Quarter Casks of Wine, etc., 2 Ben., 249; 7 Int. Rev. Rec., 114; 24 Fed. Cas., 398.

Copies of Invoices and Bills of Lading.—The fact that at the time a person entered goods at the customhouse there were in existence to his knowledge several copies of the bills of lading and invoices presented by him does not make his sworn statement under R. S. 2841 a false oath, as the other invoices or bills of lading intended by the statute are bills or invoices different from those presented and not merely the copies thereof which by commercial usage or statute are required to be procured.—U. S. v. Harrison, 32 Fed. Rep., 386.

Invoices for Free Goods.—Invoices of merchandise entitled to free entry were required in 1889 to conform to the requirements of R. S. 2853, 2854, 2855, and 2860.—Phelps v. Siegfried, 142 U. S., 602.

Purchase Price.—Where an importer purchased goods through an agent in Europe and the agent, though having a lien for advances, surrenders the goods to the importer for much less than the purchase price because the latter is unable to pay more, the sum for which they are thus surrendered is not the proper invoice price, but the invoice should be at the original price at which the agent purchased the goods.

But if the agent violated his authority in purchasing the goods and thereby made them his own, the importer would have a right to purchase them from the agent as owner; and if he obtained them at a reduced price this would be the price at which they should be invoiced and entered, although much below the prevailing price of the goods.—U. S. v. Sixty-five Packages of Glass, Betts Ser. Bk., 23; 27 Fed. Cas., 1115.

1913 **D.** That all such invoices shall, at or before the shipment of the merchandise, be produced to the consular officer of the United States of the consular district in which the merchandise was manufactured, or purchased, or contracted to be delivered from, or when purchases or agreements for purchase are made in several places, in the consular district where the merchandise is assembled for shipment, as the case may be, for export to the United States, and shall have indorsed thereon, when so produced, a declaration signed by the purchaser, seller, manufacturer, owner, or agent, setting forth that the invoice is in all respects correct and true and was made at the place from which the merchandise is to be exported to the United States; that it contains, if the merchandise was obtained by purchase, or agreement for purchase, a true and full statement of the time when, the place where, the person from whom the same was purchased, or agreed to be purchased, and the actual cost thereof, or price agreed upon, fixed, or determined, and of all charges thereon, as provided by this Act; and that no discounts, rebates, or commissions are contained in the invoice but such as have been actually allowed thereon, and that all drawbacks or bounties received or to be received are shown therein; and when obtained in any other manner than by purchase, or agreement of purchase, the actual market value or

wholesale price thereof, at the time of exportation to the United States, in the principal markets of the country from whence exported; that such actual market value is the price at which the merchandise described in the invoice is freely offered for sale to all purchasers in said markets, and that it is the price which the manufacturer or owner making the declaration would have received, and was willing to receive, for such merchandise sold in the ordinary course of trade in the usual wholesale quantities, and that it includes all charges thereon as provided by this Act, and the actual quantity thereof; and that no different invoice of the merchandise mentioned in the invoice so produced has been or will be furnished to anyone. If the merchandise was actually purchased, or agreed to be purchased, the declaration shall also contain a statement that the currency in which such invoice is made out is that which was actually paid for the merchandise by the purchaser, or agreed to be paid, fixed, or determined.

SEC. 28.

Subsec. 3: That all such invoices shall, at or before the shipment of the merchandise, be produced to the consular officer of the United States of the consular district in which the merchandise was manufactured or purchased, as the case may be, for export to the United States, and shall have indorsed thereon, when so produced, a declaration signed by the purchaser, seller, manufacturer, owner, or agent, setting forth that the invoice is in all respects correct and true, and was made at the place from which the merchandise is to be exported to the United States; that it contains, if the merchandise was obtained by purchase, a true and full statement of the time when, the place where, the person from whom the same was purchased, and the actual cost thereof, and of all charges thereon, as provided by this Act; and that no discounts, bounties, or drawbacks are contained in the invoice but such as have been actually allowed thereon; and when obtained in any other manner than by purchase, the actual market value or wholesale price thereof, at the time of exportation to the United States, in the principal markets of the country from whence exported; that such actual market value is the price at which the merchandise described in the invoice is freely offered for sale to all purchasers in said markets, and that it is the price which the manufacturer or owner making the declaration would have received, and was willing to receive, for such merchandise sold in the ordinary course of trade in the usual wholesale quantities, and that it includes all charges thereon as provided by this Act, and the actual quantity thereof; and that no different invoice of the merchandise mentioned in the invoice so produced has been or will be furnished to anyone. If the merchandise was actually purchased, the declaration shall also contain a statement that the currency in which such invoice is made out is that which was actually paid for the merchandise by the purchaser.

SEC. 3. That all such invoices shall, at or before the shipment of the merchandise, be produced to the consul, vice consul, or commercial agent of the United States of the consular district in which the merchandise was manufactured or purchased, as the case may be, for export to the United States, and shall have indorsed thereon, when so produced, a declaration signed by the purchaser, manufacturer, owner, or agent, setting forth that the invoice is in all respects correct and true, and was made at the place from which the merchandise is to be exported to the United States; that it contains, if the merchandise was obtained by purchase, a true and full statement of the time when, the place where, the person from whom the same was purchased, and the actual cost thereof and of all charges thereon, as provided by this Act; and that no discounts, bounties, or drawbacks are contained in the invoice but such as have been actually allowed thereon; and when obtained in any other manner than by purchase, the actual market value or wholesale price thereof at the time of exportation to the United States in the principal markets of the country from whence exported; that such actual market value is the price at which the merchandise described in the invoice is freely offered for sale to all purchasers in said markets, and that it is the price which the manufacturer or owner making the declaration would have received, and was willing to receive, for such merchandise sold in the ordinary

1890

course of trade, in the usual wholesale quantities, and that it includes all charges thereon as provided by this Act; and the actual quantity thereof; and that no different invoice of the merchandise mentioned in the invoice so produced has been or will be furnished to any one. If the merchandise was actually purchased, the declaration shall also contain a statement that the currency in which such invoice is made out is that which was actually paid for the merchandise by the purchaser.

R. S.

SEC. 2844. If there is no consul or commercial agent of the United States in the country from which such merchandise was imported, the authentication required by the preceding section shall be executed by a consul of a nation at the time in amity with the United States, if there is any such residing there; and if there is no such consul in the country the authentication shall be made by two respectable merchants, if any there be, residing in the port from which the merchandise shall have been imported.

DECISIONS UNDER THE ACT OF 1913.

Collectors should refuse to accept invoices signed by the agent of the purchaser when such invoices do not state the name of the person from whom the goods were purchased. Entry may be permitted on a pro forma invoice and a bond taken for the production of a corrected consular invoice.—Dept. Order (T. D. 34779).

The law and the regulations require that the price paid or agreed to be paid by the purchaser shall be stated in the invoice in every case when the goods have been purchased or agreed to be purchased by a purchaser in this country, whether shipped direct to the purchaser or to an agent or branch house of the seller. The market value may also be stated, but it is not required. A purchaser in this country who has in turn sold the merchandise should state the price paid to the foreign seller and it is not necessary to state the price which he receives or is to receive for the goods.

Merchandise must be invoiced upon the "purchased" form whenever the price or amount to be paid or remitted therefor is fixed or determined at the time or prior to the shipment of the merchandise, regardless of whether the merchandise is to be appraised under paragraph L or not.—Dept. Order (T. D. 34700).

Commissions.—A person or firm purchasing goods for an American importer with no interest in the goods other than his commission should be considered as an agent of the purchaser. The evidence to be required of such agency is primarily for the determination of the consul; in case of regularly constituted commissionaires, a written order from the purchaser should be considered as sufficient evidence of the agency. A bona fide commission is not a dutiable charge.—Dept. Order (T. D. 34163).

DECISIONS UNDER THE ACT OF 1909.

Certification of Invoice.

"COUNTRY" IN STATUTES AND TREASURY REGULATIONS.—A long-continued uniform departmental practice of both State and Treasury Departments, now reviewed, shows the word "country" to have been interpreted to mean the locality and not the political domain itself.

CERTIFICATION OF INVOICE BY BRITISH VICE CONSUL.—The collector at the port of New York rejected a proffered invoice and entry as not duly certified. The invoice was certified by the British vice consul at Laguna, Mexico, this certificate containing the statement that there was no American consular office within that district. The invoice as presented to the collector was duly certified under the laws and regulations. It was the collector's duty to receive it, and, failing to do this, no valid appraisalment could be had. All proceedings

as to exacting bond and otherwise after such failure were accordingly invalid.—*U. S. v. Marquardt & Co.* (Ct. Cust. Appls.), T. D. 35435; (G. A. 7651) T. D. 34999 affirmed.

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Invoices of Purchased Goods.—Whenever merchandise is actually purchased, the invoice and declaration indorsed thereon must be signed by the purchaser or his duly authorized agent.—Dept. Order (T. D. 23484).

Authority of Consuls.—It seems that it is mandatory on a consul to certify an invoice properly produced before him unless he has reason to believe that the statements contained therein are untrue.—T. D. 23141 (G. A. 4951).

Certification of Invoices by Acting Consuls.—Invoices certified by acting consular agent to be accepted when accompanied by seal of office unless there is ground to believe that it has been fraudulently affixed.—Dept. Order (T. D. 22737).

Certification of Invoices by Consul's Clerk.—Invoices certified by officers appointed in accordance with the provisions of paragraph 39, Consular Regulations of 1896, and section 1695, Revised Statutes. Department's decision of November 16, 1899 (T. D. 21769), distinguished.—Dept. Order (T. D. 22571).

Certification of Invoices of Purchased Goods.—Invoices of purchased goods must state the name of the purchaser, although the bill of lading may be made "to order." Department's decision of June 16, 1900 (T. D. 22291), approved.—Dept. Order (T. D. 22419).

Authentication of Consular Invoices.—The rule that consular invoices should be certified before the consul of the district in which the goods are when purchased, or from which the journey of exportation to the United States commences, restated and approved.—Dept. Order (T. D. 22388).

Shipper's Declarations on Invoices.—Invoices required to be made strictly in accordance with consular regulations, and especially paragraphs 668 and 669 thereof. Shippers required to give date, name of seller and purchaser, name of vessel; ports of shipment, arrival, and entry; value and kind of merchandise embraced in the invoice, and also on each invoice of purchased goods to state the name of the resident in the United States by whom the purchase in the foreign country was made either directly or by agent.—Dept. Order (T. D. 22291).

Certification of Invoices by Consul's Clerk.—Invoices certified by a clerk in a consulate general in absence of vice consul general and deputy consul general invalid.—Dept. Order (T. D. 21769).

DECISIONS UNDER EARLIER STATUTES PERTAINING TO THE SAME SUBJECT MATTER.

Invoice is Not Evidence of Title.—An invoice is not a bill of sale nor is it evidence of a sale. It is a mere detailed statement of the nature, quantity, and cost or price of the thing invoiced, and it is as appropriate to a bailment as to a sale. It does not of itself necessarily indicate to whom the things are sent, or even that they have been sent at all. Hence, standing alone, it is never regarded as evidence of title.—*Dows v. National Exchange Bank*, 91 U. S., 618, 630.

Invoice to be Consulated Before Each Shipment.—When goods are purchased in a foreign country and in quantities sufficient to load several vessels an invoice executed in triplicate must be produced and exhibited to the Amer-

ican consul at or before each shipment, and where the importation is by rail the same rule applies to each train of one or more cars laden with the goods.—*Locke v. U. S.*, 2 Cliff., 574; 15 Fed. Cas., 740.

1913 E. That, except in case of personal effects accompanying the passenger, no importation of any merchandise exceeding \$100 in value shall be admitted to entry without the production of a duly certified invoice thereof as required by law, or of an affidavit made by the owner, importer, or consignee, before the collector or his deputy, showing why it is impracticable to produce such invoice; and no entry shall be made in the absence of a certified invoice, upon affidavit as aforesaid, unless such affidavit be accompanied by a statement in the form of an invoice, or otherwise, showing the actual cost of such merchandise, if purchased, or if obtained otherwise than by purchase, the actual market value or wholesale price thereof at the time of exportation to the United States in the principal markets of the country from which the same has been imported, which statement shall be verified by the oath of the owner, importer, consignee, or agent desiring to make entry of the merchandise, to be administered by the collector or his deputy, and it shall be lawful for the collector or his deputy to examine the deponent under oath, touching the sources of his knowledge, information, or belief in the premises, and to require him to produce any letter, paper, or statement of account in his possession, or under his control, which may assist the officers of customs in ascertaining the actual value of the importation or any part thereof, and in default of such production, when so requested, such owner, importer, consignee, or agent shall be thereafter debarred from producing any such letter, paper, or statement for the purpose of avoiding any additional duty, penalty, or forfeiture incurred under this Act, unless he shall show to the satisfaction of the court or the officers of the customs, as the case may be, that it was not in his power to produce the same when so demanded; and no merchandise shall be admitted to entry under the provisions of this section unless the collector shall be satisfied that the failure to produce a duly certified invoice is due to causes beyond the control of the owner, consignee, or agent thereof: *Provided*, That the Secretary of the Treasury may make regulations by which books, magazines, and other periodicals published and imported in successive parts, numbers, or volumes, and entitled to be imported free of duty, shall require but one declaration for the entire series. And when entry of merchandise exceeding \$100 in value is made by a statement in the form of an invoice, the collector shall require a bond for the production of a duly certified invoice.

1909 SEC. 28. Subsec. 4. That, except in case of personal effects accompanying the passenger, no importation of any merchandise exceeding \$100 in value shall be admitted to entry without the production of a duly certified invoice thereof as required by law, or of an affidavit made by the owner, importer, or consignee, before the collector or his deputy, showing why it is impracticable to produce such invoice; and no entry shall be made in the absence of a certified invoice, upon affidavit as aforesaid, unless such affidavit be accompanied by a statement in the form of an invoice, or otherwise, showing the actual cost of such merchandise, if purchased, or if obtained otherwise than by purchase, the actual market value or wholesale price thereof at the time of exportation to the United States in the principal markets of the country from which the same has been imported, which statement shall be verified by the oath of the owner, importer, consignee, or agent desiring to make entry of the merchandise, to be administered by the collector or his deputy, and it shall be lawful for the collector or his deputy to examine the deponent under oath, touching the sources of his knowledge, information, or belief in the premises, and to require him to produce any letter, paper, or statement of account in his possession, or under his control, which may assist the officers of customs in ascertaining the actual value of the importation or any part thereof, and in default of such production, when so requested, such owner, importer, consignee, or agent shall be thereafter debarred from producing any such letter, paper, or statement for the purpose of avoiding any additional duty, penalty, or forfeiture incurred under this Act, unless he shall show to the satisfaction of the court or the officers of the

1909 customs, as the case may be, that it was not in his power to produce the same when so demanded; and no merchandise shall be admitted to entry under the provisions of this section unless the collector shall be satisfied that the failure to produce a duly certified invoice is due to causes beyond the control of the owner, consignee, or agent thereof: *Provided*, That the Secretary of the Treasury may make regulations by which books, magazines, and other periodicals published and imported in successive parts, numbers, or volumes, and entitled to be imported free of duty, shall require but one declaration for the entire series. And when entry of merchandise exceeding \$100 in value is made by a statement in the form of an invoice, the collector shall require a bond for the production of a duly certified invoice.

1890 SEC. 4. That, except in case of personal effects accompanying the passenger, no importation of any merchandise exceeding \$100 in dutiable value shall be admitted to entry without the production of a duly certified invoice thereof as required by law, or of an affidavit made by the owner, importer, or consignee, before the collector or his deputy, showing why it is impracticable to produce such invoice; and no entry shall be made in the absence of a certified invoice, upon affidavit as aforesaid, unless such affidavit be accompanied by a statement in the form of an invoice, or otherwise, showing the actual cost of such merchandise, if purchased, or if obtained otherwise than by purchase, the actual market value or wholesale price thereof at the time of exportation to the United States in the principal markets of the country from which the same has been imported, which statement shall be verified by the oath of the owner, importer, consignee, or agent desiring to make entry of the merchandise, to be administered by the collector or his deputy, and it shall be lawful for the collector or his deputy to examine the deponent under oath, touching the sources of his knowledge, information, or belief in the premises, and to require him to produce any letter, paper, or statement of account in his possession, or under his control, which may assist the officers of customs in ascertaining the actual value of the importation or any part thereof, and in default of such production, when so requested, such owner, importer, consignee, or agent shall be thereafter debarred from producing any such letter, paper, or statement for the purpose of avoiding any additional duty, penalty, or forfeiture incurred under this Act, unless he shall show to the satisfaction of the court or the officers of the customs, as the case may be, that it was not in his power to produce the same when so demanded; and no merchandise shall be admitted to entry under the provisions of this section unless the collector shall be satisfied that the failure to produce a duly certified invoice is due to causes beyond the control of the owner, consignee, or agent thereof: *Provided*, That the Secretary of the Treasury may make regulations by which books, magazines, and other periodicals published and imported in successive parts, numbers, or volumes, and entitled to be imported free of duty, shall require but one declaration for the entire series. And when entry of merchandise exceeding \$100 in value is made by a statement in the form of an invoice, the collector shall require a bond for the production of a duly certified invoice.

DECISIONS UNDER THE ACT OF 1913.

Pro Forma Invoice.—When entry is made on pro forma invoice and the consular invoice subsequently produced shows increased duties, they should be collected on the bond without reliquidation of the entry.—Dept. Order (T. D. 36547).

When the consular invoice arrives prior to examination of the merchandise or pro forma invoice by the appraiser, the consular invoice may be substituted and bond canceled. When deductions are made in pro forma invoice to make market value and the consular invoice when received agrees with the pro forma invoice, bond may be canceled without collection of any increased duty.—Dept. Order (T. D. 36921).

DECISION UNDER THE ACT OF 1909.

Pro Forma Invoice.—In this case the merchandise was entered at the value stated in the pro forma invoice, which was the appraised value. The consular invoice value was found to be greater than that of the pro forma invoice and the collector reliquidated the entry, assessing duty upon the consular invoice value. Protest overruled. *U. S. v. Bennett* (2 Ct. Cust. Appls., 249; T. D. 31975) and *U. S. v. Hobbs* (T. D. 32567) cited.—Ab. 31247.

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Pro Forma and Duly Certified Invoices.

The bond required of an importer entering his goods upon a pro forma invoice stipulates that duties are to be and will be paid upon the certified invoice valuation. In all cases the collector is empowered to reliquidate within one year, the customs regulations governing him in the exercise of this power. In this case authority for the reliquidation by the collector is found both in the law and the express stipulation of the importer's bond.—*U. S. v. Hobbs* (Ct. Cust. Appls.), T. D. 32567; (*G. A. 7309*) T. D. 32107 reversed.

Where the collector in the liquidation of an entry has before him a pro forma invoice and a consular invoice containing several items, and there has been an appraisement, he should not select the high values from each invoice and assess duty accordingly.

The liquidation of an entry upon a pro forma invoice where a bond is given to produce a consular invoice considered.—T. D. 32107 (*G. A. 7309*).

The entry was made on a pro forma invoice, on or about April 25, 1907. On May 2 the importers filed a consular invoice duly certified, showing the consignment cost less than the amount stated in the pro forma invoice. On May 9 the assistant appraiser made a return on the pro forma invoice showing it to be correct, and apparently on the same day the appraiser's approval was indorsed thereon. The collector's notation on the pro forma invoice showed the entered value to be the same as that approved by the appraiser. Later, on May 13, at the request of the appraiser the pro forma invoice was returned to him, and on the next day it was sent to the collector by the assistant appraiser with a notation correcting by diminishing the stated value of the consignment, but no approval of this act by the appraiser is shown, and the collector thereupon indorsed "No reduction in entered value allowed." The importers took no appeal.

DUTY OF AN APPRAISER.—An appraiser, after having once performed the duty of appraisement in respect to any particular merchandise and after having made his return thereof to the collector, has no authority of his own volition to make another appraisement of the same merchandise. *U. S. v. Frank & Lambert*, supra (T. D. 31973).

PROCEEDINGS ON A PRO FORMA ENTRY NOT SIMPLY TENTATIVE.—Reviewing at length the history of the legislation, the practice of the Treasury Department and the decisions of the courts as well, no warrant is found for the statement that an entry upon a pro forma invoice should be held open until the certified invoice is produced or the bond given for its production has been forfeited; nor is any authority found for holding that liquidation is proper on an amount less than the entered value in case an entry is made upon a pro forma invoice, no manifest clerical error or duress appearing.

THE FUNCTION OF A PRO FORMA INVOICE.—A pro forma invoice is for entry purposes a recognized lawful invoice made under oath as a substitute for a regularly certified invoice; a penalty for undervaluation in such an invoice may be inflicted and an entry on a pro forma invoice is such an entry as the

language of section 7, customs administrative act of 1890, should and must apply to, namely, "the duty shall not, however, be assessed in any case upon an amount less than the invoice or entered value."—*U. S. v. Bennett & Loewenthal* (Ct. Cust. Appls.), T. D. 31975; T. D. 30210 (C. C.) and Ab. 19656 reversed.

APPRAISEMENT.—Entry was made on a pro forma invoice and the value stated therein was approved by the appraiser. Subsequently a consular invoice giving a lower value was also approved by the appraiser. *Held*, that duty should have been assessed on the basis of the value in the latter invoice.—*U. S. v. Bennett* (C. C.), T. D. 30210; G. A. Ab. 19656 affirmed; reversed by T. D. 31975 (Ct. Cust. Appls.), *supra*.

The board held that the dutiable value of merchandise entered on a pro forma invoice should be that given in the consular invoice rather than that in the pro forma invoice, the appraiser having approved the former value. G. A. 6723 (T. D. 28796) noted.—Ab. 19656; reversed by T. D. 31975 (Ct. Cust. Appls.), *supra*.

INDORSED "APPROVED" BY APPRAISER.—The importers entered the goods upon affidavit and statement in the form of an invoice, giving bond as required by law. The collector sent this pro forma invoice to the appraiser, and upon the report of the assistant appraiser there appeared the words "Approved, E. S. Fowler, appraiser." Later the importers filed a consular invoice to cancel their bond, and in an accompanying verified statement asserted the incorrectness of the pro forma invoice, but made no application for reappraisalment. The entry was liquidated on the basis of the value as given in the pro forma invoice. *Held*, the indorsement of "approved" by the appraiser shows a compliance with the requirement that he should ascertain, estimate, and appraise the actual market value of the merchandise and make a report thereon; furthermore, to hold thus is in accord with the regulations and practice in respect of pro forma invoices. *U. S. v. Bennett & Loewenthal* (T. D. 31975).—*U. S. v. Frank & Lambert* (Ct. Cust. Appls.), T. D. 31973; Ab. 21027 (T. D. 29690) reversed.

The entry in this case was made on a pro forma invoice which purports to give an estimated value of an automobile. The local appraiser merely marked on the invoice in red ink the word "correct," which would indicate very clearly that he made no appraisement of the merchandise, but merely expressed the opinion that the value specified in the pro forma invoice was sufficient to cover the market value of the article in question. A bond was given the collector for the production of a certified or consular invoice, which seems to have been presented to the collector prior to the liquidation of the entry, which occurred January 20, 1908. Overruled in T. D. 31973 (Ct. Cust. Appls.), *supra*.

The importers contended that duty should have been assessed on the value given in the consular invoice rather than that given in the pro forma invoice. Protest sustained on the authority of G. A. 6785 (T. D. 29141) and *U. S. v. Muller* (158 Fed. Rep., 405; T. D. 28518) followed).—Ab. 21026 (T. D. 29690).

APPRAISEMENT.—Merchandise was entered on a pro forma invoice at a value which was passed as "correct" by the local appraisers; no appeal was taken for reappraisalment, and the entry was liquidated on the basis of this value; but subsequently to the liquidation a certified invoice was produced by the importers, showing that various nondutiable items had been included in the value of the pro forma invoice, and the appraisers reported to the collector that, had the certified invoice been before them originally, they would have made allowance for said nondutiable items. *Held*, nevertheless, that duty was properly assessed on the basis of the former value.—*U. S. v. Foard* (C. C.), T. D. 30936; (G. A. 6723) T. D. 28796 reversed.

Where merchandise is entered upon a pro forma invoice and bond given by the importer to produce a certified invoice, the collector should not liquidate the entry until the certified invoice is produced or the period of the bond has expired.

Where an entry made upon a pro forma invoice on which the appraiser made the notation "Value correct" is liquidated before the production of a certified invoice, and thereafter, and before the expiration of the period of the bond given by the importer, the certified invoice is filed showing that the value given in the pro forma invoice included a nondutiable item of freight which the appraiser reports to be a reasonable deduction, *Held*, that under these facts the entry should be reliquidated and duty assessed on the value as shown by the certified invoice. 152 Fed. Rep., 575 (T. D. 27895); T. D. 28518; G. A. 6398 (T. D. 27488); G. A. 5856 (T. D. 25801); 141 Fed. Rep., 473 (T. D. 26494).—T. D. 28796 (G. A. 6723); reversed in T. D. 30936 (Ct. Cust. Appls.), *supra*.

CONSULAR INVOICE.—When a collector has before him both a pro forma and a consular invoice and there is no valid appraisal by an appraising officer, he should assess and collect duty upon the value of the merchandise, as stated in the consular invoice.

APPRAISEMENT—VALIDITY.—Where the appraisement of merchandise by an appraising officer does not conform to the requirements of the law and is invalid, the merchandise comes before the collector the same as if there had been no appraisement and should be assessed for duty at the value stated in the consular invoice.

METHOD OF APPRAISEMENT.—Method of appraisement adopted by the appraising officer held to be invalid. *Ter Kuile's case*, G. A. 6398 (T. D. 27488); *U. S. v. Muller* (158 Fed. Rep., 405; T. D. 28518); *U. S. v. Commercial Cable Co.* (141 Fed. Rep., 473; T. D. 26494); *Bozzo's case*, G. A. 6108 (T. D. 26605).—T. D. 29141 (G. A. 6785).

The goods were entered by pro forma invoice. A bond was given for the production of a consular invoice. A consular invoice was produced prior to the liquidation of the entry. Hence duty was assessed upon the increased value as shown by this consular invoice, in accordance with the proviso to section 7 of the act of June 10, 1890, as amended by section 32 of the act of July 24, 1897. The production of this consular invoice operated manifestly to discharge the obligations of the bond. After the liquidation of the entry was made, a second invoice was produced, which is claimed to be certified by the consul and to show the value stated in the original entry based on the pro forma invoice to be correct. This was produced after the liquidation of the entry. It came too late and was properly refused to be considered by the collector.—*Ab. 21634* (T. D. 29931).

Placer Gold—Seizure and Forfeiture in Absence of Invoice and Entry.—Placer gold, although free of duty under paragraph 629, tariff act of July 24, 1897, is liable to seizure and forfeiture in absence of invoice and entry.—*Six Parcels of Placer Gold v. U. S.* (Sup. Ct., Territory of Arizona), T. D. 25200.

Entries on Triplicate Invoices.—An importer is not only permitted but required to make entry on the triplicate copy of an invoice where the importer has failed to receive his copy of the invoice, and no entry upon a pro forma invoice will be allowed until it has been shown that no triplicate is on file. Regulations prescribing the method of procedure in such cases.—*Dept. Order* (T. D. 25124).

Invoices.

CORRECTED INVOICES.—Where importers discover that invoices sent them from abroad are incorrect, they have a right to seek to procure correct ones and

substitute them for the originals. *Gillespie v. U. S.* (unreported); *Howland v. Maxwell* (3 Blatch., 146; 12 Fed. Cas., 742); *Carnes v. Maxwell* (3 Blatch., 420; 5 Fed. Cas., 90), followed.

BONDS FOR THE PROCURING OF SUCH INVOICES.—It seems that, where an importer notifies a collector of his intention to procure a corrected invoice in place of the one presented at time of entry, he should give a bond for the production of such invoice.

IMPERFECT INVOICES.—Where an invoice states that the value of the merchandise covered by it is given "without package," and the packing charges and other expenses incident to placing it in condition packed ready for shipment to the United States are nowhere specified, such invoice does not answer the requirements of the act of June 10, 1890, and the importers can not demand that a collector shall receive it as a substitute for an invoice already presented, even though that first invoice is itself defective in some particular which is prejudicial to the importer.—*T. D. 23141* (G. A. 4951).

Corrected Invoice Produced After Entry.—An importer may have the benefit of a corrected invoice, even though he made entry on papers which he knew to be imperfect without giving a bond to procure a proper invoice, he having obtained and offered a corrected invoice to the collector before the entry was liquidated. *T. D. 18409* (G. A. 3966) reversed.—*Gillespie v. U. S.*, 124 Fed. Rep., 106.

Bond for Production of Invoice.—The bond required by section 4, act of June 10, 1890, is not intended to secure a penalty for breach of duty, but only such damage as results from the absence of the invoice, and the sureties upon such a bond can only be called upon to respond for those damages. 59 Fed. Rep., 1000, affirmed.—*U. S. v. Cutajar* (C. C. A.), 67 Fed. Rep., 530.

Rice entered on pro forma invoice and bond given to produce invoice within six months. Duly authenticated invoice not produced although the collector received within six months the triplicate invoices required by R. S. 2855, to be forwarded from the United States consul when verified in Italy. *Held*, that the United States, upon default, are not entitled to recover the full penalty of the bond but only the duties.—*U. S. v. Cutajar* (C. C.), 59 Fed. Rep., 1000.

DECISIONS UNDER EARLIER STATUTES PERTAINING TO THE SAME SUBJECT MATTER.

Penalty for Absence of Invoice.—Under section 1, act of March 3, 1863, the collector has no power to permit an entry of merchandise unaccompanied by an invoice, or a sufficient excuse for its absence, but this section gives the Secretary that authority and the same equitable power of remission as in other cases.

When goods are refused an entry for want of an invoice if the owner attempts to procure an entry by any false and fraudulent practice or appliance whatever the goods are forfeited. *U. S. v. Thirty-Nine Thousand One Hundred and Fifty Cigars*, 3 Ware, 324; 28 Fed. Cas., 55.

F. That whenever merchandise imported into the United States is entered by invoice, a declaration upon a form to be prescribed by the Secretary of the Treasury, according to the nature of the case, shall be filed with the collector of the port at the time of entry by the owner, importer, consignee, or agent, which declaration so filed shall be duly signed by the owner, importer, consignee, or agent before the collector, or before a notary public or other officer duly authorized by law to administer oaths and take acknowledgments, under regulations to be prescribed by the Secretary of the Treasury: *Provided*, That if any of the invoices or bills of lading of any merchandise imported in any one vessel which should otherwise be embraced in said entry have not been received at the date

1913

of the entry the declaration may state the fact, and thereupon such merchandise, of which the invoices or bills of lading are not produced, shall not be included in such entry, but may be entered subsequently. That the Secretary of the Treasury and the Secretary of Commerce are hereby authorized and directed to establish from time to time for statistical purposes a list or enumeration of articles in such detail as in their judgment ported into the United States, and that as a part of the declaration herein may be necessary comprehending all goods, wares, and merchandise imported there shall be either attached thereto or included therein an accurate statement specifying, in the terms of the said detailed list or enumeration, the kinds and quantities of all merchandise imported, and the value of the total quantity of each kind of article, and it shall be the duty of the consular officer, to whom the invoice shall be produced, to require such information to be given.

SEC. 28.

Subsec. 5: That whenever merchandise imported into the United States is entered by invoice, one of the following declarations, according to the nature of the case, shall be filed with the collector of the port at the time of entry by the owner, importer, consignee, or agent, which declaration so filed shall be duly signed by the owner, importer, consignee, or agent before the collector, or before a notary public or other officer duly authorized by law to administer oaths and take acknowledgments, who may be designated by the Secretary of the Treasury to receive such declarations and to certify to the identity of the persons making them, under regulations to be prescribed by the Secretary of the Treasury; and every officer so designated shall file with the collector of the port a copy of his official signature and seal: *Provided*, That if any of the invoices or bills of lading of any merchandise imported in any one vessel which should otherwise be embraced in said entry have not been received at the date of the entry, the declaration may state the fact, and thereupon such merchandise, of which the invoices or bills of lading are not produced, shall not be included in such entry, but may be entered subsequently.

DECLARATION OF CONSIGNEE, IMPORTER, OR AGENT WHERE MERCHANDISE HAS BEEN ACTUALLY PURCHASED.

1909

I, ———, do solemnly and truly declare that I am the consignee, importer, or agent of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the collector of ——— are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the ———, whereof ——— is master, from ———, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me; and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly declare that to the best of my knowledge and belief (insert the name and residence of the owner or owners) is (or are) the owner (or owners) of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids,

which are not otherwise specially subject to duty under any paragraph of the tariff Act, and all other costs, charges, and expenses incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

DECLARATION OF CONSIGNEE, IMPORTER, OR AGENT WHERE MERCHANDISE HAS NOT BEEN ACTUALLY PURCHASED.

I, ———, do solemnly and truly declare that I am the consignee, importer, or agent of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the collector of ——— are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the ———, whereof ——— is master, from ———, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly declare that to the best of my knowledge and belief (insert the name and residence of the owner or owners) is (or are) the owner (or owners) of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual market value or wholesale price at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff Act, and all other costs, charges, and expenses incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

1909

DECLARATION OF OWNER IN CASES WHERE MERCHANDISE HAS BEEN ACTUALLY PURCHASED.

I, ———, do solemnly and truly declare that I am the owner by purchase of the merchandise described in the annexed entry and invoice; that the entry now delivered by me to the collector of ——— contains a just and true account of all the goods, wares, and merchandise imported by or consigned to me, in the ———, whereof ——— is master, from ———; that the invoice and entry, which I now produce, contain a just and faithful account of the actual cost of the said goods, wares, and merchandise, and include and specify the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff Act, and all other costs, charges, and expenses incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading

(other than those now produced by me, and that they are in the state in which I actually received them. And I further solemnly and truly declare that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that to the best of my knowledge and belief the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made, and that if at any time hereafter I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

DECLARATION OF MANUFACTURER OR OWNER IN CASES WHERE MERCHANDISE HAS NOT BEEN ACTUALLY PURCHASED.

1909 I, ———, do solemnly and truly declare that I am the owner (or manufacturer) of the merchandise described in the annexed entry and invoice; that the entry now delivered by me to the collector of ——— contains a just and true account of all the goods, wares, and merchandise imported by or consigned to me in the ———, whereof ——— is master, from ———; that the said goods, wares, and merchandise were not actually bought by me, or by my agent, in the ordinary mode of bargain and sale, but that nevertheless the invoice which I now produce contains a just and faithful valuation of the same, at their actual market value or wholesale price, at the time of exportation to the United States, in the principal markets of the country from whence imported for my account (or for account of myself or partners); that such actual market value is the price at which the merchandise described in the invoice is freely offered for sale to all purchasers in said markets and is the price which I would have received and was willing to receive for such merchandise sold in the ordinary course of trade in the usual wholesale quantities; that the said invoice contains also a just and faithful account of all the cost of finishing said goods, wares, and merchandise to their present condition, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demi-johns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff Act, and all other costs and charges incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other discount, drawback, or bounty, but such as has been actually allowed on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me; and that they are in the state in which I actually received them. And I do further solemnly and truly declare that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice, or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

1890 SEC. 5. That whenever merchandise imported into the United States is entered by invoice, one of the following declarations, according to the nature of the case, shall be filed with the collector of the port, at the time of entry by the owner, importer, consignee, or agent; which declaration so filed shall be duly signed by the owner, importer, consignee, or agent before the collector, or before a notary public or other officer duly authorized by law to administer oaths and take acknowledgments who may be designated by the Secretary of the Treasury to receive such declarations and to certify to the identity of the persons making them, under regulations to be prescribed by the Secretary of the Treasury; and every officer so designated shall file with the collector of the port a copy of his official signature and seal: *Provided*, That if any of the

invoices or bills of lading of any merchandise imported in any one vessel, which should otherwise be embraced in said entry, have not been received at the date of the entry, the declaration may state the fact, and thereupon such merchandise of which the invoices or bills of lading are not produced shall not be included in such entry, but may be entered subsequently.

DECLARATION OF CONSIGNEE, IMPORTER, OR AGENT.

I, ———, do solemnly and truly declare that I am the consignee [importer or agent] of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the collector of ——— are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the ——— whereof ——— is master, from ———, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been, on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purports to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly declare that to the best of my knowledge and belief [insert the name and residence of the owner or owners] is [or are] the owner [or owners] of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost (if purchased) or the actual market value or wholesale price (if otherwise obtained) at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

1890

DECLARATION OF OWNER IN CASES WHERE MERCHANDISE HAS BEEN ACTUALLY PURCHASED.

I, ———, do solemnly and truly declare that I am the owner of the merchandise described in the annexed entry and invoice; that the entry now delivered by me to the collector of ——— contains a just and true account of all the goods, wares, and merchandise imported by or consigned to me, in the ———, whereof ——— is master, from ———; that the invoice and entry which I now produce contain a just and faithful account of the actual cost of the said goods, wares, and merchandise and include and specifies the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them. And I further solemnly and truly declare that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods,

wares, and merchandise; that to the best of my knowledge and belief the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purports to have been made; and that if at any time hereafter I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

DECLARATION OF MANUFACTURER OR OWNER IN CASES WHERE MERCHANDISE HAS NOT BEEN ACTUALLY PURCHASED.

1890 I, ———, do solemnly and truly declare that I am the owner (or manufacturer) of the merchandise described in the annexed entry and invoice; that the entry now delivered by me to the collector of ——— contains a just and true account of all the goods, wares and merchandise imported by or consigned to me in the ———, whereof ——— is master, from ———; that the said goods, wares, and merchandise were not actually bought by me, or by my agent, in the ordinary mode of bargain and sale, but that nevertheless the invoice which I now produce contains a just and faithful valuation of the same, at their actual market value or wholesale price, at the time of exportation to the United States, in the principal markets of the country from whence imported for my account (or for account of myself or partners); that such actual market value is the price at which the merchandise described in the invoice is freely offered for sale of all purchasers in said markets, and is the price which I would have received and was willing to receive for such merchandise sold in the ordinary course of trade in the usual wholesale quantities; that the said invoice contains also a just and faithful account of all the cost of finishing said goods, wares, and merchandise to their present condition, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs and charges incident to placing said goods, wares, and merchandise in condition packed ready for shipment to the United States, and no other discount, drawback, or bounty but such as has been actually allowed on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purports to have been made; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them. And I do further solemnly and truly declare that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice, or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

DECISIONS UNDER THE ACT OF 1913.

Declarations on Entry.—The owner's declaration (Catalogue No. 3347) can not be made by an agent. When entry is made on an indorsed bill of lading the name of the owner must be given and his declaration produced. The agent of merchandise sold at a price delivered may make the declaration of ultimate consignee when the goods are consigned to him for delivery. Only one bond is required for the declaration of several owners when the merchandise is included in one entry. An owner's declaration antedating the entry may be accepted when the agent's declaration is made at the time of entry.—Dept. Order (T. D. 35264).

The declarations to be filed on entry are prescribed in T. D. 34283 and T. D. 35060.

The consignee of goods sold at a price delivered, who acts as agent of the shipper for delivery thereof, may make the declaration as ultimate consignee, or give a bond for the production of the declaration of the purchaser.—T. D. 36338.

DECISIONS UNDER THE ACT OF 1909.

Bond for Owner's Declaration.—The owner's declaration, or a bond for the production thereof, should be required on entry of merchandise sold at a price delivered in the United States duty and expenses paid. The bond may be canceled on the production of an affidavit of the purchaser showing the price paid and that he has no knowledge of the value declared on entry.—Dept. Order (T. D. 32518).

Owners' declarations may be executed by out-of-town importers prior to arrival of importing vessel, provided there is presented on entry a declaration made after the arrival of the importing vessel by the consignee or agent clearing the shipment.—Dept. Order (T. D. 31559).

DECISIONS UNDER THE ACT OF 1890.

Partnership.

PURCHASED GOODS—"PURCHASE."—Where goods have been bought by a firm composed of two brothers resident in this country from a firm in Italy composed of two other brothers of the same family, and it is shown by a preponderance of the evidence that there was no community of interests or division of the profits and losses between the brothers residing in this country and those residing in Italy, such goods are purchased goods within the meaning of section 5 of the customs administrative act of 1890.

TEST OF PARTNERSHIP.—The test of a partnership in its legal aspect, as universally held by the courts, is whether there is such a community of interest among its members as to make them participants in the profits and losses of any particular business. Persons can not be regarded as assuming the relation of partners as between themselves unless these ingredients concur.

EVIDENCE.—Where the existence of a partnership is disputed, the declaration or admission of one member of the alleged partnership is not admissible evidence to prove the fact of partnership or to bind third persons as partners. One exception to this rule is where third parties are induced to assume obligations by persons holding themselves out as partners when in fact they are not partners. In such a case they would be estopped from denying their individual liability as partners, so as to prevent a fraud on innocent third parties.

UNVERIFIED REPORT OF A MERCANTILE AGENCY.—A report of a mercantile agency offered in evidence as tending to corroborate certain admissions of one of the members of an alleged partnership, but which is not verified by oath, constitutes mere hearsay and is inadmissible as evidence.—T. D. 29447 (G. A. 6850).

Importer's Right to Add to Make Market Value on Entry.

WHEN ADDITION MAY BE MADE.—Where goods have been actually purchased abroad as distinguished from such as are consigned merely, the importers have a right, in making their entry of the merchandise, to make such additions to the cost or value given in the invoice as in their opinion may raise the same to the actual market value or wholesale price of such merchandise, at the time of exportation to the United States, in the principal markets of the country from which the same has been exported; but no such addition can be made upon entry in the case of imported merchandise obtained otherwise than by actual purchase.

DETERMINATION AS TO WHETHER GOODS HAVE BEEN ACTUALLY PURCHASED.—Where merchandise is actually purchased abroad from manufacturers, and the invoice of the goods contains, respectively, the names of the vendors of the goods which have been bought by agents of an American house with limited authority to purchase, and with a view of immediate shipment of the same to

this country, such merchandise will be regarded as having been actually purchased and not consigned.

INVOICE DECLARATIONS MAY BE OPEN TO EXPLANATIONS.—Where such invoices are made out in the form prescribed by section 5 of the customs administrative act of 1890, providing for "the declaration of owner in cases where the merchandise has been actually purchased," the naming of the agents of the importing house as the sellers of the goods is subject to explanation and does not operate as an estoppel against the importers to prevent them from proving the facts of the case.

WHEN IMPORTERS WILL BE GRANTED RELIEF.—The importers having been denied by the collector the right to make the requisite additions to market value under section 7 of the customs administrative act of 1890, as amended by section 32 of the present tariff act of 1897, the Board of General Appraisers will grant proper relief correcting the decision of the collector assessing penal duties on the merchandise.—T. D. 27243 (G. A. 6326).

None of the declarations set forth in section 5, act of June 10, 1890, is required for shipments not exceeding \$100 in dutiable value.—Dept. Order (T. D. 25574).

A bond must be exacted to produce the owner's oath required by section 2842, Revised Statutes, notwithstanding the owner may be temporarily absent from the United States. Imported merchandise owned by a foreign resident, although the same may be consigned to a resident of the United States and the consular invoice made out on the form provided for goods "actually purchased," should be treated as a consignment.—Dept. Order (T. D. 23931).

Entry of Merchandise.—All merchandise arriving on one vessel and consigned to one and the same consignee, should be included in one entry, when papers necessary to complete entry have been received. Merchandise for which no invoice or bill of lading has reached the consignee may be entered subsequently, but notation of the cases to be omitted from original entry should be made thereon. (Sec. 5, act of June 10, 1890.)—Dept. Order (T. D. 23838).

Corporations.—The principal officers of a corporation may take owner's oath on entry of goods consigned to such corporation.—Dept. Order (T. D. 17199).

Invoices of Goods Arriving by Cars.—The department holds that any one invoice of merchandise arriving by different cars or different trains of the same road may embrace the importations of about one week from the date of first arrival and no longer, and that in no instance should this period run from one fiscal year into another.—Dept. Order (T. D. 18269).

DECISIONS UNDER EARLIER STATUTES PERTAINING TO THE SAME SUBJECT MATTER.

Agent's Declaration as Manufacturer.—S. through his agent K. purchased in England unfinished goods and through K. had them dyed there by one man and made up by another. In each case S. paid the cost of the work. K. then invoiced the goods to S. at New York at a price equal to the cost of purchase, dyeing, and making up, with K.'s commissions added. Entry of goods was made on such invoice on the ordinary purchaser's oath provided for by section 4, act of March 1, 1823, now R. S. 2841. The valuation in the invoice was below the market value. *Held*, that the invoice and the oath ought to have been such as the statute requires of the manufacturer.—*Sinn v. U. S.*, 14 Blatchf., 550; 22 Fed. Cas., 226.

1913

G. That if any consignor, seller, owner, importer, consignee, agent, or other person or persons shall enter or introduce, or attempt to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall make any false statement in the declarations provided for in paragraph F without reasonable cause to believe the truth of such statement, or shall aid or procure the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, or shall be guilty of any willful act or omission by means whereof the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such person or persons shall upon conviction be fined for each offense a sum not exceeding \$5,000, or be imprisoned for a time not exceeding two years, or both, in the discretion of the court: *Provided*, That nothing in this section shall be construed to relieve imported merchandise from forfeiture by reason of such false statement or for any cause elsewhere provided by law.

SEC. 28.

Subsec. 6: That any person who shall knowingly make any false statement in the declarations provided for in the preceding section, or shall aid or procure the making of any such false statement as to any matter material thereto, shall, on conviction thereof, be punished by a fine not exceeding \$5,000, or by imprisonment at hard labor not more than two years, or both, in the discretion of the court: *Provided*, That nothing in this section shall be construed to relieve imported merchandise from forfeiture by reason of such false statement or for any cause elsewhere provided by law.

1909

Subsec. 9: That if any consignor, seller, owner, importer, consignee, agent, or other person or persons, shall enter or introduce, or attempt to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall be guilty of any willful act or omission by means whereof the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from such person or persons, shall be forfeited, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates; and such person or persons shall, upon conviction, be fined for each offense a sum not exceeding \$5,000, or be imprisoned for a time not exceeding two years, or both, in the discretion of the court.

1890

SEC. 6. That any person who shall knowingly make any false statement in the declarations provided for in the preceding section, or shall aid or procure the making of any such false statement as to any matter material thereto, shall, on conviction thereof, be punished by a fine not exceeding \$5,000, or by imprisonment at hard labor not more than two years, or both, in the discretion of the court: *Provided*, That nothing in this section shall be construed to relieve imported merchandise from forfeiture by reason of such false statement or for any cause elsewhere provided by law.

SEC. 9. That if any owner, importer, consignee, agent, or other person shall make or attempt to make any entry of imported merchandise by means of any fraudulent or false invoice, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall be guilty of any willful act or omission by means whereof the United States shall be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such

- 1890 { invoice, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from the person making the entry, shall be forfeited, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates; and such person shall, upon conviction, be fined for each offense a sum not exceeding \$5,000, or be imprisoned for a time not exceeding two years, or both, in the discretion of the court.

DECISIONS UNDER THE ACT OF 1913.

Power of Collector.—The collector is not an appraising officer, and he has no authority under the statute to reliquidate an entry at a higher valuation than that at which it was appraised by the appraising officers, no reappraisement having been asked or had.

This is true notwithstanding that the passage of the goods through the customhouse at the price at which they were appraised was accomplished by means of a declaration that was untrue and an invoice that was false and fraudulent.

In such a case the Government is not without a remedy. Paragraph G of section 3 of the tariff act of October 3, 1913, provides a criminal action against the offender, and paragraph H provides an action for the forfeiture of the goods or their value.—T. D. 34917 (G. A. 7636).

DECISIONS UNDER THE ACT OF 1909.

Suppression of Documents—Perjury.—It is only necessary that an importer should have knowledge of some document which, if known, would have led the United States to fix customs duties higher than if the entry went through at the values fixed in the consular invoice to make him guilty of perjury in making an affidavit that nothing had been to his knowledge concealed or suppressed whereby the United States might be defrauded. It is not necessary that the suppression be in the entry or invoice, or that it be of a document which would, in the usual course, come to the authorities.

A statement as to the absence of any suppressed facts by which the United States might be defrauded is material within a statute making criminal any false statement in a customs declaration as to any matter material thereto.—U. S. v. Salen (D. C.), T. D. 34890. Herman A. Salen was indicted for perjury. Motions to quash the indictment denied.

The suppression clause in the declaration required to be made by the consignee or agent of imported goods by subsection 6 of section 28 of the act of August 5, 1909, relates to the omission of matter proper to be included in the invoice and account attached and not to independent facts.—U. S. v. Salem (235 U. S., 237).

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

False Declaration.—In an indictment under section 6, act of June 10, 1890, an averment that the defendant "willfully declared that he was the owner of the goods, whereas in fact he was not the owner, as he then and there well knew," is sufficient upon demurrer.

An intent to defraud the United States is not an essential ingredient of the offense constituted by section 6, act of June 10, 1890.

No offense is complete under section 6, act of June 10, 1890, until the false declaration there referred to is filed or offered to be filed with the collector when making or attempting to make the entry.—U. S. v. Fawcett, 86 Fed. Rep., 900.

1913 H. That if any consignor, seller, owner, importer, consignee, agent, or other person or persons shall enter or introduce, or attempt to enter or introduced, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall make any false statement in the declarations provided for in paragraph F without reasonable cause to believe the truth of such statement, or shall aid or procure the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, or shall be guilty of any willful act or omission by means whereof the United States shall or may be deprived of the lawful duties or any portion thereof, accruing upon the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from such person or persons, shall be forfeited, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates. That the arrival within the territorial limits of the United States of any merchandise consigned for sale and remaining the property of the shipper or consignor, and the acceptance of a false or fraudulent invoice thereof by the consignee or the agent of the consignor, or the existence of any other facts constituting an attempted fraud, shall be deemed, for the purposes of this paragraph, to be an attempt to enter such merchandise notwithstanding no actual entry has been made or offered.

SEC. 28.

Subsec. 6: That any person who shall knowingly make any false statement in the declarations provided for in the preceding section, or shall aid or procure the making of any such false statement as to any matter material thereto, shall, on conviction thereof, be punished by a fine not exceeding \$5,000, or by imprisonment at hard labor not more than two years, or both, in the discretion of the court: *Provided*, That nothing in this section shall be construed to relieve imported merchandise from forfeiture by reason of such false statement or for any cause elsewhere provided by law.

1909 Subsec. 9: That if any consignor, seller, owner, importer, consignee, agent, or other person or persons, shall enter or introduce, or attempt to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall be guilty of any willful act or omission by means whereof the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from such person or persons, shall be forfeited, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates; and such person or persons shall, upon conviction, be fined for each offense a sum not exceeding \$5,000, or be imprisoned for a time not exceeding two years, or both, in the discretion of the court.

1890 SEC. 6. That any person who shall knowingly make any false statement in the declarations provided for in the preceding section, or shall aid or procure the making of any such false statement as to any matter material thereto, shall, on conviction thereof, be punished by a fine not exceeding \$5,000, or by imprisonment at hard labor not more than two years, or both, in the discretion of the court: *Provided*, That nothing in this section shall be construed to relieve imported merchandise from forfeiture by reason of such false statement or for any cause elsewhere provided by law.

SEC. 9. That if any owner, importer, consignee, agent, or other person shall make or attempt to make any entry of imported merchandise by

1890 { means of any fraudulent or false invoice, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall be guilty of any willful act of omission by means whereof the United States shall be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from the person making the entry, shall be forfeited, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates; and such person shall, upon conviction, be fined for each offense a sum not exceeding \$5,000, or be imprisoned for a time not exceeding two years, or both, in the discretion of the court. ●

DECISIONS UNDER THE ACT OF 1909.

Forfeiture of Panama Hats for Fraud of Foreign Consignor—Decision of United States Supreme Court.—Panama hats not technically entered, but stored in general order, subject to forfeiture at end of one year for fraud of foreign consignor. The arrival at port of entry of goods fraudulently undervalued by foreign consignor is an attempt to introduce them into the commerce of the United States.—*U. S. v. Twenty-Five Packages Panama Hats* (U. S.) (T. D. 34029); T. D. 32737 reversed.

Forfeiture—False Invoice.—The provision of section 9, customs administrative act, June 10, 1890 (26 Stat., 135), as amended by section 28, subsection 9, act of August 5, 1909 (36 Stat., 97), that "if any consignor, seller, owner, importer, consignee, agent, or other person or persons shall enter or introduce, or attempt to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, affidavit," etc., such merchandise shall be subject to forfeiture, is penal in character, and must be strictly construed, and is not applicable to goods until an entry of the same has been actually made or attempted. Goods in "general order" are not subject to forfeiture because of the filing of a false and fraudulent invoice by the foreign consignor, where it is not charged that the consignee participated in or knew of the false invoice, and he has made no attempt to enter the goods.—*U. S. v. Twenty-Five Packages of Panama Hats* (Castillo, claimant) (C. C. A.), T. D. 32737.

Cattle Straying Across the Border—"Importation."—Grazing cattle straying into the United States across the Canadian border held not to be "imported merchandise" within the meaning of subsection 9, section 28, tariff act of 1909, and therefore not subject to forfeiture.—*U. S. v. Eighty-Five Head of Cattle* (D. C.), T. D. 33739.

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Forfeiture.

DUTY OF IMPORTER.—A passenger from abroad was not bound to enter as baggage, within Revised Statutes, section 2799, a trunk containing only merchandise intended for sale, but was bound to indicate its character to the customs officer.

FRAUDULENT INVOICE.—Imported goods are not forfeitable because the consular invoice procured by her underestimated their value, where, before anything was done toward entry, her attorney wrote a letter to the Treasury Solicitor, stating that entry on the invoice was not desired and correcting the values.—*U. S. v. One Trunk* (Gannon, claimant) (C. C. A.), T. D. 32747. Note T. D. 30214 (D. C.), *infra*.

The failure to list articles on an invoice will not by itself justify the forfeiture of such articles under section 9 for making a false invoice.—*The Lace House v. U. S. (C. C. A.)*, T. D. 26970.

"ATTEMPT TO ENTER."—Where an importer took out a fraudulent invoice, but concluded not to use it in making entry of the goods covered by the invoice, but used instead a corrected invoice, the goods were not forfeitable under section 9, customs administrative act of 1890, on the ground of a fraudulent "attempt to enter" imported merchandise.

"BAGGAGE."—Merchandise for sale is not "baggage" within the meaning of section 2799, Revised Statutes.

DECLARATION AS BAGGAGE.—Where merchandise for sale is imported in a trunk separate from the remainder of a passenger's effects, no effort being made to conceal it among the passenger's personal effects or to have it treated as personal baggage, the passenger is under no obligation to declare it as baggage under section 2799, Revised Statutes.

PERSONAL EFFECTS.—The exception of "personal effects accompanying the passenger" from the requirement of section 4, customs administrative act of 1890, that "no importation of any merchandise" shall be entered without an invoice, is equivalent to an exception of articles not personal effects from section 2799, Revised Statutes, relating to the declaration of "baggage."

GRATUITOUS FALSE STATEMENT.—Where at the time of making a declaration under section 2799, Revised Statutes, a passenger intentionally misstates the value of merchandise for sale that is imported at the same time, such merchandise is not forfeitable, because no declaration of value was required by said section.

IMPORTED MERCHANDISE.—Congress having prescribed two independent systems of formalities for the importation of personal effects and merchandise not personal effects, each complete in itself, under section 2799, Revised Statutes, and section 4, customs administrative act of 1890, respectively, it could not have been intended that both should be applicable to merchandise imported by a passenger arriving in the United States, but not attempted to be concealed by dressing it up as baggage.

STATEMENT OF VALUE.—Articles 610–611, Treasury Regulations of 1892, requiring passengers to state the value of their baggage, are valid, because paragraph 697, tariff act of 1897, puts a pecuniary limitation upon the exemption to which the passenger is entitled.—*U. S. v. One Trunk (Gannon, claimant)* (D. C.), T. D. 30214.

ILLEGAL ENTRY—"OTHER PERSON."—In section 9, customs administrative act of 1890, relating to the attempt of an "owner, importer, consignee, agent, or other person" to make an illegal entry, the term "other person" is not limited to those bearing to imports the relation of owner, etc., but was meant to reach others having something to do with respect to the entry beyond that which was done by the owner, etc., and it includes the case of a customs weigher who had falsely returned the weight of imported goods.

EJUSDEM GENERIS.—The rule of ejusdem generis is only a rule of construction and is not to be applied to defeat the real purpose of the statute. Where the particular words exhaust the class enumerated, the addition of a general term must be construed as embracing something outside of that class. So, in section 9, customs administrative act of 1890, in reference to making an illegal entry of imports, the addition of the term "other person" to the enumeration of "owner, importer, consignee, or agent," was intended to include persons having a different relation to the importation from that of the owner, etc., inasmuch as none but the owner, importer, consignee, or agent could "make entry" in the nar-

rower sense of that term.—*U. S. v. Mescall* (U. S.), T. D. 30131; T. D. 29242 (C. C.) reversed.

ILLEGAL ENTRY—"ENTRY."—In section 9, customs administrative act of 1890, forbidding the making or attempting to make a false entry of imported merchandise, by means of a fraudulent practice, etc., the word "entry" is not limited to the paper filed with the collector of customs, but refers to the entire transaction of passing the goods through the customhouse, including such steps as weighers' returns on articles dutiable by weight.

ACTS BY "OTHER PERSON."—The provision in section 9, customs administrative act of 1890, against false entries by the importer "or other person," does not relate to all individuals who may assist or have a fraudulent part in making an entry; and it does not include the case of an assistant customs weigher who made false returns in furtherance of an importer's attempt to make a fraudulent entry.—*U. S. v. Mescall* (C. C.), T. D. 29242.

MISDESCRIPTION OF CONSIGNEE AS OWNER.—If a person making entry is consignee and not owner of the importation, he violates the law if he declares himself the owner, and the importation is forfeitable by reason of such false statement, under section 9, customs administrative act of 1890, relating to entry by means of any "false or fraudulent paper, or by means of any false statement, written or verbal."

ORIGINAL PLAN TO DEFRAUD—ACT OF FOREIGN SHIPPER.—Laces and silks were packed and invoiced as preserved fruits, but before entry the invoice was corrected to show the true nature and value of the fabrics. *Held*, that if the original plan under which the goods were shipped and brought into the United States, as shown by the manner in which they were packed and in which the invoice was made up, showed a purpose on the part of the consignee to smuggle the goods into the United States, the goods were forfeitable, regardless of said correction of the invoice before entry.

DUTY OF IMPORTER TO GIVE COLLECTOR NEW INFORMATION.—It is the duty of an importer, upon receiving information which would bring about a change in the invoice, to take such information to the collector.

HOLDER OF BILL OF LADING—PROOF OF TRUE OWNERSHIP.—The provision in section 1, customs administrative act of 1890, that the holder of a bill of lading "shall be deemed the consignee," and that for the purpose of the act imports shall be "deemed and held to be the property of the person to whom the merchandise may be consigned," does not preclude the Government from going behind the bill of lading to show true ownership for the purpose of determining the forfeitability of the goods.

CONSPIRACY—INSUFFICIENT ALLEGATION.—An allegation of a cause of forfeiture on the theory of conspiracy is inadequate which does not name some one as conspiring with the party charged with the conspiracy.

BURDEN OF PROOF.—In proceedings for the forfeiture of imported merchandise the burden of proving that the importation was legal rests upon the claimant.

EVIDENCE—PREPONDERANCE.—Preponderance of evidence arises from the weight and sufficiency of the evidence, and not from the number of witnesses.—*U. S. v. One Bag of Crushed Wheat, Etc.* (D. C.), T. D. 29450.

ILLEGAL ENTRY BY ABSENTEE.—Forfeiture for illegal entry under section 9, customs administrative act of 1890, does not accrue against a party who was in another country when the entry was made where it does not appear that the person making the entry at the customhouse was his agent.

"CLANDESTINELY INTRODUCE."—Section 2865, Revised Statutes, making it criminal to "smuggle or clandestinely introduce" merchandise into the United States, does not include a case where merchandise is fraudulently entered at the customhouse.

CERTIFICATION OF INVOICES.—Section 3, customs administrative act of 1890, providing for the indorsement on invoices of a declaration before a United States consul, does not require the invoices to be verified.

ACTS BY EXPORTER.—Where an exporter causes a false and fraudulent invoice to be made out, signed, verified, and left with a consul to be transmitted to the collector of customs at an American port and then causes the merchandise covered by the invoice to be shipped to said port, he is not brought by these acts within the prohibitions of section 2865, Revised Statutes, forbidding any person to "make out or pass, or attempt to pass, through the customhouse any false, forged, or fraudulent invoice."—U. S. v. 646 Half Boxes of Figs (D. C.), T. D. 29251.

FORFEITURE—FRAUD OF SHIPPER—"OWNER."—The provision in section 9, customs administrative act of 1890, for forfeiture of merchandise entered on a false invoice by the "owner," includes a case where a shipper abroad made a false declaration before the American consul as to goods of which he was the owner both when the declaration was made and when the goods were entered at the customhouse in this country.

CRIMINAL INTENT.—Before there can be any forfeiture of merchandise under section 9, customs administrative act of 1890, on the ground of making a false declaration before the American consul, criminal intent on the part of the declarant must be shown.

REASONABLE DOUBT.—In establishing a right of forfeiture under section 9, customs administrative act of 1890, the Government has the same burden as in criminal cases of proving fraudulent intent beyond a reasonable doubt.—U. S. v. Two Bales of Rugs, Etc. (D. C.), T. D. 29245.

ILLEGAL ENTRY—"ENTRY."—Section 5445, Revised Statutes, relating to the crime of aiding in effecting an illegal "entry" of imported goods, the term "entry" is not limited to the paper so known in the customs service, nor to the making and filing of this paper, nor to the process of filing it, and thereby entering the goods.

AID SUBSEQUENT TO ENTRY—FALSE RETURN BY WEAIGHER.—In section 5445, Revised Statutes, relating to the crime of aiding "in effecting any entry of any goods at less than the true weight or measure," includes aid rendered after as well as before the entry is made at the customhouse; as where a weigher returns false weights to the collector, upon which duties are to be computed.

"EVERY PERSON"—WEAIGHER.—Section 5445, Revised Statutes, prescribing the punishment "of every person" who knowingly effects an entry of merchandise at less than the true weight, is not limited to persons outside the customs service, and includes a weigher who aids in a way prohibited by the statute.

LOCUS PENITENTIAE.—A person who has aided illegally in effecting a fraudulent entry of imported merchandise, under section 5445, Revised Statutes, is not relieved from the penal consequences of his acts by the fact that he would have had an opportunity for repentance up to the time when the goods had been released and the fraud had become successful. His acts are within the section if they constitute aid in any material step of a fraudulent importation.—U. S. v. Mescall (3 cases) (C. C.), T. D. 29244.

FRAUDULENT ENTRY—ACTS DONE AFTER FILING ENTRY.—Under section 5444, Revised Statutes, making it a crime to knowingly aid in "admitting to entry" any imported goods at less than the legal rate of duty, the term "entry" does not mean simply the act of filing at the customhouse the paper known as an entry, but comprises the transaction of entering the goods into the body of the commerce of the United States—that is, the whole process of passing the goods through the customhouse, which can not be deemed complete until liquidation

has been had. The section, therefore, may include the official acts of a customs weigher performed after the customhouse entry has been made.

ACCESSORIES AFTER THE FACT.—The provision in section 5444, Revised Statutes, against aiding in admitting merchandise to entry at less than the legal rate of duty includes aid given both before and after the fact; and where, after a false entry has been made, a customs officer aids the wrongdoer by concealing the fraud or by rendering other false statements to correspond with the original false entry he transgresses against this section.—*U. S. v. Mescall* (C. C.), T. D. 29243.

FORFEITURE—FALSE INVOICE—FRAUD OF SHIPPER.—Section 9, customs administrative act of 1890, providing forfeiture of imported merchandise where the importer "or other person" makes entry "by means of any fraudulent or false invoice, false statement," etc., does not include a case where an importer, without fraud or guilty knowledge, makes entry by means of an invoice falsely made out by the foreign shipper.

CONSUMMATION OF FRAUD.—Under section 9, customs administrative act of 1890, providing forfeiture of imported merchandise when entered by means of a false invoice, the falsification must be of such character that if consummated it would deprive the United States of some of the lawful duties accruing upon the merchandise. Merely a fraudulent misstatement which by itself, without further wrongful acts, could not, in the regular course of procedure, produce that result is not within the section.—*U. S. v. 20 Boxes of Cheese* (D. C.), T. D. 28956.

FORFEITURE—COMPLETION OF FRAUD.—Under section 9, customs administrative act of 1890, providing forfeiture of imported merchandise "if any person shall make or attempt to make any entry by means of any fraudulent or false invoice, by means whereof the United States shall be deprived of the lawful duties accruing upon the merchandise," it is not necessary that there shall be completed fraud and actual deprivation of lawful duties. If the act be calculated to deprive the United States of duties, the statute is satisfied.—*U. S. v. 66 Cases of Cheese*; *U. S. v. 79 Bags of Cheese* (D. C.), T. D. 28892.

FORFEITURE—SCIENTER ON PART OF FORFEITOR.—Construing section 9, customs administrative act of 1890, providing forfeiture of imported merchandise where the importer "or other person" makes an entry "by means of any fraudulent or false invoices, false statement, false or fraudulent practice or appliance whatsoever, or any willful act or omission," *Held*, that a guilty knowledge and intent on the part of the forfeitor is required, and that where a false invoice made out by the foreign shipper was innocently used in making entry of imported goods the penalties of the section were not incurred, regardless of the nature of the shipper's purpose and of the fact that he had a financial interest in defrauding the Government in the matter.—*U. S. v. One Silk Rug* (C. C. A.), T. D. 28779; T. D. 28387 (C. C.) affirmed.

FORFEITURE—STATUTE OF LIMITATIONS.—Section 22, act of June 22, 1874 (18 Stat., 190), providing that forfeiture proceedings arising "under the customs revenue laws of the United States" must be begun within three years, is, at least as to customs revenue cases, an amendment to section 1047, Revised Statutes, providing a five-year limitation for forfeiture proceedings arising "under the laws of the United States."

The provision in section 9, customs administrative act of 1890, for the forfeiture of the value of undervalued importations is penal in its nature, and an action for the forfeiture of such value is for a "pecuniary penalty or forfeiture" within the meaning of section 22, act of June 22, 1874 (18 Stat., 190), providing that such actions must be brought within three years after the forfeiture accrues.—*U. S. v. Witteman* (C. C. A.), T. D. 27876.

SEIZURE—CERTIFICATE OF REASONABLE CAUSE.—Under section 970, Revised Statutes, providing that, if judgment is rendered in favor of the claimant of property seized by Government officers, the court may enter a certificate of reasonable cause of seizure, *Held*, that the certificate ought to be granted where the evidence shows affirmatively that the officers were acting in good faith and under circumstances that would justify a reasonable suspicion.—U. S. v. 83 Sacks of Wool and 5,974 Sheepskins (D. C.), T. D. 27772.

FORFEITURE OF TOBACCO—FALSE INVOICE—FRAUDULENT INTENT.—In construing section 9, customs administrative act of 1890, providing that the false or fraudulent entry of imported merchandise shall be punishable by forfeiture of the merchandise and by fine and imprisonment, *Held*, that the statute being penal, it was not intended to apply to mistakes or errors in judgment, but to acts indicating an intent to defraud, and that a mistake in the description of imported merchandise, unaccompanied by acts from which an intent to defraud may be presumed, is insufficient to justify forfeiture under said provision.

DESCRIPTION OF TOBACCO.—An importation of tobacco, of which a portion was wholly filler and another portion filler and wrapper mixed, the latter portion being dutiable at a higher rate than the former, as though consisting wholly of wrapper, under paragraphs 213 and 214, tariff act of 1897, was all invoiced as "tobacco fillers." *Held*, that this description did not constitute an entry "by means of a false or fraudulent invoice," by reason of which the tobacco should be forfeited under section 9, customs administrative act of 1890, especially in view of the further facts that there was nothing in the conduct of the importers to indicate an intent to defraud, and that they knew that the entire shipment would be examined on importation by the customs officers and its exact character ascertained.

JURISDICTION OF BOARD OF GENERAL APPRAISERS.—In deciding that an importation is not subject to forfeiture as being fraudulent, *Held*, that questions as to the classification of the merchandise may be determined before the Board of General Appraisers.—U. S. v. 75 Bales of Tobacco (C. C. A.), T. D. 27449; T. D. 27310 (C. C.) affirmed.

CONSTRUCTION OF SECTION 9, CUSTOMS ADMINISTRATIVE ACT.—None of the acts denounced by section 9, customs administrative act of 1890, constitute an offense thereunder unless they deprive the United States of some of its lawful duties.

FALSE STATEMENT IN ENTRY.—The word "false" in section 9, customs administrative act of 1890, which prescribes punishment by forfeiture, fine, and imprisonment for the use of a false statement in making an entry of imported goods, means more than incorrect or erroneous. It implies wrong, or culpable negligence, and signifies knowingly or negligently untrue.

"FALSE" AND "FALSELY" CONDITIONING FORFEITURES AND PENALTIES GENERALLY MEAN KNOWINGLY OR NEGLIGENTLY UNTRUE.—The words "false" and "falsely" in statutes and contracts which impose forfeitures or penalties for false acts, or acts falsely done, generally imply culpable negligence or wrong. They signify more than incorrect or incorrectly and mean knowingly or intentionally or negligently false or falsely, in the absence of express provisions in the statutes or contracts or reasonable implications from them, their subject and the circumstances to the contrary.

DECISION.—One who had the right of possession of and a lien upon imported merchandise for the duties and for transportation expenses which he had paid, together with the option to purchase any of it at fixed prices, or to return it to the tentative venders, declared in good faith in making an entry of the goods, which were invoiced to him, that he was the owner. His statement did not deprive the Government of any lawful duties. *Held*, the use of this statement

to make the entry did not constitute an offense under section 9, customs administrative act of 1890.—*U. S. v. 99 Diamonds (C. C. A.)*, T. D. 26775; T. D. 25806 (C. C.) affirmed.

FRAUDULENT IMPORTATION—ACTION IN PERSONAM.—Under section 9, customs administrative act of June 10, 1890, providing, in case of fraudulent importation of merchandise, that the value of such merchandise, "to be recovered from the person making the entry, shall be forfeited," *Held*, that the remedy is by an action against the person and not by an action in rem against the money itself.

FORFEITURE OF VALUE OF MERCHANDISE.—Section 3082, Revised Statutes, provided, in case of importation of merchandise contrary to law, that "such merchandise shall be forfeited," does not afford authority for forfeiture of the value of the merchandise.

ACQUITTAL FROM CRIMINAL INDICTMENT—PLEA IN BAR.—On proceedings in rem for the forfeiture of imported merchandise, in which the person appearing as claimant of the merchandise had previously been tried and acquitted on an indictment for illegal importation of the same goods, and in which the issues presented by the indictment were the same as those raised in the proceedings in rem, *Held*, that the acquittal operated as a bar to the prosecution of the suit in rem.

NOLLE PROSEQUI—PLEA IN BAR.—Two persons were separately indicted for fraudulently importing merchandise into the United States, both indictments growing out of the same transaction; one was tried and acquitted, and a nolle prosequi was entered to the indictment against the other. *Held*, that neither the acquittal of one nor the nolle prosequi regarding the other operated as a bar to proceedings in rem for the forfeiture of the merchandise to which the latter was claimant.—*U. S. v. A Lot of Precious Stones and Jewelry (C. C. A.)*, T. D. 26159.

DUTY ON SEIZED GOODS.—Where goods are seized for fraudulent or false entry under section 9, act of June 10, 1890, and released upon the payment of a fine equal to the amount of the duty, the importers are not thereby relieved from the payment of the duty. The fine is a penalty incurred by reason of a violation of a law. The duty accrues under the law by the act of importation. They are separate and distinct and bear no relation to each other. *Dana's case*, G. A. 5147 (T. D. 23749); *U. S. v. One Case Paintings* (99 Fed. Rep., 426); *U. S. v. 1,621 Pounds Fur Clippings* (106 Fed. Rep., 161); *Gray v. U. S.* (113 Fed. Rep., 213), and *Baldwin v. U. S.* (113 Fed. Rep., 217).—T. D. 25970 (G. A. 5896).

Forfeiture Where There is No Loss of Duty.—Question whether or not a loss of duty is a necessary element of forfeiture under section 9. In the opinion of the Attorney General, the section down to and including the word "whatsoever" is not conditional upon loss of duty, but the words "by means whereof the United States shall be deprived," etc., qualify only the words "or shall be guilty of any willful act or omission."—Dept. Order (T. D. 14497).

Entry of Cheese by Fraudulent Papers.—Loss of lawful duties is not a necessary element of the crime of making a fraudulent entry under section 9, act of June 10, 1890, and therefore the crime can be committed by an entry of cheese by means of false and fraudulent papers, notwithstanding the cheese is subject to a specific duty (par. 267, act of 1890), the weight to be determined by the public weigher and not by the papers connected with the entry.—*U. S. v. Cutajar (C. C.)*, 60 Fed. Rep., 744.

Fraudulent Entry.—A period of less than five years will not bar a prosecution for effecting an entry of goods at the customhouse by a fraudulent entry of them and a false classification as to their quality and value.

Conspiracy to defraud the United States of the duties on certain imported goods is not a "crime arising under the revenue laws," and the persons charged therewith can not be prosecuted therefor unless they be indicted within three years next after the alleged committing thereof.—U. S. v. Hirsch, 100 U. S., 33.

Wrapper Tobacco Invoiced as Filler.—An invoice describing a shipment of tobacco as filler when in fact it was wrapper held to be false and fraudulent under this section and the goods forfeited.—U. S. v. 19 Bales of Tobacco, 112 Fed. Rep., 779.

DECISIONS UNDER EARLIER STATUTES PERTAINING TO SAME SUBJECT MATTER.

Overvaluation of Cotton Goods on Entry.—Importation of cotton goods entered at a higher value in order to subject them to an ad valorem rate of duty which in some instances is less than the compound rate. Department instructions were to ascertain the actual market value as a basis for the rate of duty, the ad valorem duty to be assessed on the entered value.—Dept. Order (T. D. 4913).

1913 I. That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make entry of such merchandise, but not after either the invoice or the merchandise has come under the observation of the appraiser, make such addition in the entry to or such deduction from the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of 1 per centum of the total appraised value thereof for each 1 per centum that such appraised value exceeds the value declared in the entry: *Provided*, That the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value, and shall be limited to 75 per centum of the appraised value of such article or articles. Such additional duties shall not be construed to be penal, and shall not be remitted nor payment thereof in any way avoided except in cases arising from a manifest clerical error, nor shall they be refunded in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than 75 per centum, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding other than a criminal prosecution that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall apply to the whole of the merchandise or the value thereof in the

1913 case or package containing the particular article or articles in each invoice which are undervalued: *Provided further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice, and no forfeiture or disability of any kind incurred under the provisions of this section shall be remitted or mitigated by the Secretary of the Treasury. The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury in cases in which the importer certifies at the time of entry that the entered value is higher than the foreign market value and that the goods are so entered in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement, and the importer's contention shall subsequently be sustained by a final decision on reappraisement, and it shall appear that the action of the importer on entry was taken in good faith, after due diligence and inquiry on his part, and the Secretary of the Treasury shall accompany his directions with a statement of his conclusions and his reasons therefor.

SEC. 28.

1909 Subsec. 7: That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to or such deduction from the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of 1 per centum of the total appraised value thereof for each 1 per centum that such appraised value exceeds the value declared in the entry: *Provided*, That the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value, and shall be limited to 75 per centum of the appraised value of such article or articles. Such additional duties shall not be construed to be penal, and shall not be remitted nor payment thereof in any way avoided except in cases arising from a manifest clerical error, nor shall they be refunded in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than 75 per centum, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding other than a criminal prosecution that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles in each invoice which are undervalued: *Provided further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice shall be alike applicable to merchandise entered by a pro forma invoice or state-

1909 ment in the form of an invoice, and no forfeiture or disability of any kind incurred under the provisions of this section shall be remitted or mitigated by the Secretary of the Treasury. The duty shall not, however, be assessed in any case upon an amount less than the entered value.

1890 SEC. 7 (as amended by section 32, act of July 24, 1897). That the owner, consignee, or agent of any imported merchandise which has been actually purchased may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; but no such addition shall be made upon entry to the invoice value of any imported merchandise obtained otherwise than by actual purchase; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of 1 per centum of the total appraised value thereof for each 1 per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, and shall be limited to 50 per centum of the appraised value of such article or articles. Such additional duties shall not be construed to be penal, and shall not be remitted, nor payment thereof in any way avoided, except in cases arising from a manifest clerical error, nor shall they be refunded in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than 50 per centum, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles in each invoice which are undervalued: *Provided, further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice, shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice, and no forfeiture or disability of any kind, incurred under the provisions of this section shall be remitted or mitigated by the Secretary of the Treasury. The duty shall not, however, be assessed in any case upon an amount less than the invoice or entered value.

DECISIONS UNDER THE ACT OF 1913.

Reduction of Entered Value.—Relief denied under the provisions of paragraph I of section 3, where importer made alternative or speculative contentions as to market value, and it appeared that his diligence and inquiry relative thereto had been directed only toward determining the highest value that up to that time had been returned by the local appraiser.—Dept. Order (T. D. 36221).

Undervaluation.—Where the consular invoice showed a net per se value of 8,310.60 francs, nondutiable charges of 113.25 francs, and dutiable charges of

972 francs, and entrant, attaching his declaration to the consular invoice, erroneously deducted the nondutiable charges from the net per se value stated in the invoice, making no mention of the dutiable charges, "additional duty," under paragraph I of section 3, should be levied proportionate to an undervaluation of 113.25 francs, and not 113.25 plus 972 francs.—*U. S. v. Bates* (Ct. Cust. Appls.), T. D. 36149; G. A. Ab. 38066 affirmed.

Additional Duty.

CONSTRUCTION—STATUTE NOT RETROACTIVE.—Antimony was entered under the law of 1909, which made it dutiable specifically, and withdrawn under the law of 1913, which makes it dutiable ad valorem. Its appraised exceeded its declared value. The law of 1913 will not be given a retroactive effect, so as to make it subject to the additional duty imposed by paragraph I of section 3, upon merchandise dutiable ad valorem when the appraised exceeds the declared value.—*Sheldon & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 36143; G. A. Ab. 38226 reversed.

Clerical Error.—Where the consular invoice for goods imported from Hongkong stated the total value in three currencies—correctly in pounds sterling but incorrectly in gold dollars and Tientsin taels—not one of the three agreeing by the proper rate of exchange with either of the others, and the entrants adopted the statement in Tientsin taels and declared its equivalent in gold dollars, they can not escape the payment of the additional duty imposed by section 3 of paragraph I by claiming a manifest clerical error.—*U. S. v. Gordon & Ferguson* (Ct. Cust. Appls.), T. D. 35976; G. A. Ab. 37887 reversed.

The total of the itemized invoice showed a lower value and an interlineation in the invoice showed a higher one. Importers entered the merchandise at the lower figure. There is nothing in this to justify a presumption that importers did not enter the goods as they intended. "Manifest clerical error" under paragraph I of section 3 does not appear, and the additional duty provided for by the paragraph was justly imposed.—*Oberle & Henry v. U. S.* (Ct. Cust. Appls.), T. D. 36979.

MANIFEST CLERICAL ERROR.—There can be no manifest clerical error within the meaning of that phrase as used in paragraph I of section 3 where the record discloses that the value stated upon entry though too low was deliberately so stated. *Meyer Bros. Drug Co.*, G. A. 5667 (T. D. 25257), *U. S. v. Wyman & Co.* (4 Ct. Cust. Appls., 264; T. D. 33485).

CONTEMPORANEOUS ADMINISTRATIVE CONSTRUCTION.—A practice in the collector's office in the liquidation of an entry of merchandise bearing a specific rate of duty will not be held to be a contemporaneous construction of the law when that duty is changed from a specific to an ad valorem rate, even though the practice is not changed for some time after the change in the law.

CHANGE FROM SPECIFIC TO AD VALOREM RATE.—The change by Congress from specific to ad valorem duty on merchandise carries with it all of the provisions of existing law that apply to the administration of the customs in the assessment of ad valorem duty upon imported merchandise.—Ab. 38226.

ZINC-BEARING ORE.—Under paragraph 162 the zinc contained in zinc-bearing ore is made dutiable at 10 per cent ad valorem. If the unit value is not stated in the entry, but the total value when reduced to units is less than the unit appraised value, the additional duty provision of paragraph I is properly applied by the collector in assessing duty.—T. D. 35948 (G. A. 7823).

Entered Value.—Where an invoice clearly states the unit value of merchandise an error in extension which was followed on entry can not be considered as an addition on entry to make market value.—T. D. 35767 (G. A. 7786).

Commissions—Additional Duty.—If an addition to entered value of merchandise is made by the appraiser to make market value, which addition corresponds in amount to an item of commissions appearing on the invoice, such addition ceases to be properly characterized as commissions.

Commissions, as such, are not part of the dutiable value of merchandise, nor are they either "costs," "charges," or "expenses" to be added by the collector under the statute (par. R, sec. 3, act of 1913) and the rule laid down in *U. S. v. Spingarn* (5 Ct. Cust. Appls., 2; T. D. 34002).

Where the value on entry has not been increased by the appraiser, additional duty can not be levied.—T. D. 35766 (G. A. 7785).

Entered, Higher Than Market, Value.—The provisions of paragraph I of section 3, tariff act of 1913, were designed by Congress to vest in the Secretary of the Treasury the sole and exclusive authority to direct assessment of duty upon an amount less than the entered value of the merchandise. Where goods were entered at a value higher than that stated in the invoice, with a certificate that this was done to meet advances made by the appraiser in similar pending cases, and the final appraisement was between the entered and invoice values, the refusal of the Secretary of the Treasury to direct the collector to assess duty upon less than the entered value is not reviewable upon appeal by the Board of United States General Appraisers or the United States Court of Customs Appeals.—*Mills & Gibb v. U. S.* (Ct. Cust. Appls.), T. D. 37164.

The Addition by the importer of a certain sum to the invoice value, with a certificate to the effect that the addition was made to make market value as indicated by the appraiser's advance in similar cases and that his action was taken pursuant to subsection I of section 3, tariff act of 1913, was not a compliance with the subsection, since it required him to certify that the entered value was higher than the market value (which he did not do) and provided that his action should appear to be taken after due diligence and inquiry (which did not appear).—*Vandiver v. U. S.* (Ct. Cust. Appls.), T. D. 36900.

Market Value—Entered Value.

PRINCIPAL MARKET.—The law will presume, in determining the market value of merchandise, when there is nothing appearing to the contrary, that the point from which the merchandise was consulated was determined by the appraising officer to be one of the principal markets of the country.

ACTION OF THE SECRETARY OF THE TREASURY FINAL.—The collector can not, under the provisions of subsection I of section 3, assess merchandise at a less value than the entered value unless so directed to do by the Secretary of the Treasury. The action of the Secretary under the power given to him by this provision of law is not subject to review.—T. D. 35629 (G. A. 7764).

Dutiable Value of Goods Not as Represented.—The article in question is described in the invoice as an "antique Chinese pink tourmaline necklet, £38." It was reported by the examiner as "glass beads" valued at 8 shillings. There is no proof, however, but that the article imported is the article purchased and the article invoiced. That being so, it is merely a case of the purchaser having been deceived or cheated by imposing too much confidence in the seller, and is like any case of importation of antiques which are purchased and invoiced as antiques and are finally determined by the Government authorities not to be antiques, but modern merchandise of less value. Notwithstanding this, however, the law requires assessment of duty upon the entered value.—Ab. 38261.

Packing Charges.—In the case at bar certain merchandise properly before the appraiser for appraisement was not advanced in value by him, but he did advance the amount of the packing charges stated in the invoice, and upon the

value of the merchandise and the advanced packing charges the collector assessed duty. It is the contention of the importer that the case of *U. S. v. Spingarn* (5 Ct. Cust. Appls., —; T. D. 34002) is decisive of this case. The collector has no power to appraise or place a value on the cost of packing. He must simply ascertain it and liquidate the entry accordingly. Assumably he did that under such evidence as was before him, but the evidence before us clearly shows that the cost of packing upon which the liquidation was made was excessive. The protest is therefore sustained and the collector directed to reliquidate the entry, assessing duty upon the packing charges as stated in the invoice.—Ab. 37271.

Appraisers' Returns.—Appraising officers in making returns of appraisement should not note items as disallowed, but should make specific notations of advance and state either the amount or percentage added.—Dept. Order (T. D. 34992).

The addition by the appraiser to make market value of an amount equal to items invoiced as "freight and consul fee" is not an appraisement of charges. *U. S. v. Spingarn* (5 Ct. Cust. Appls., —; T. D. 34002) distinguished.—T. D. 34569 (G. A. 7575).

Assessment of Duty on Charges.—Appraisers to advisarily return the value of charges. Duty to be assessed on the value of charges as determined by the collector. Additional duty under paragraph I does not accrue by reason of the addition of cost or charges by the collector. The costs and charges are not to be included in the entered or appraised value in determining the rate or amount of additional duty under paragraph I. The value of costs and charges are to be included in the dutiable value for the purpose of determining a rate of duty dependent on value. Appraisers should report specifically on the value of the merchandise per se. T. D. 34002 (Ct. Cust. Appls.), cited.—Dept. Order (T. D. 34274).

Dutiable Value.—In cases where an importer adds to make market value to meet advances made by the appraiser on similar goods pending reappraisement and the appraiser approves the entered value, duty can not be assessed on less than the entered and appraised value unless there is an appeal for reappraisement and the appeal is sustained.—Dept. Order (T. D. 34179).

Market Value.—Under paragraph K of section 3, tariff act of 1913, authorizing the appraiser to use "all reasonable ways and means" in his power to "ascertain, estimate, and appraise" the actual market value and wholesale price of dutiable merchandise at the time of its exportation to the United States, in the principal markets of the country whence the same has been imported, the appraiser is justified in arriving at his conclusion by deducting from the value of the merchandise at the port the shipping and freight charges from the place where the shipment originated—the principal market for such merchandise—to the port. Such action is not an appraisement of the freight and shipping charges, but a convenient method of finding the value at the place where the shipment originated.—*U. S. v. Spingarn Bros.* (5 Ct. Cust. Appls., 2; T. D. 34002) distinguished.

Where both importer and appraiser arrived at the market value by deducting inland freight and shipping charges from the value at the foreign port, and a greater deduction was made by the importer than by the appraiser, such action resulting in a larger appraised than entered value, the additional duty provided by paragraph I of section 3, tariff act of 1913, was justly imposed.—*U. S. v. Philips Co.* (Ct. Cust. Appls.), T. D. 37110.

DECISIONS UNDER THE ACT OF 1909.

Clerical Error—Selling Commission.—The entry here asserts the item claimed as exempt was dutiable. On the invoice the item is called a buying commission. This does not disclose manifest clerical error. When the appraiser examined the statement of the inspector that the item was a nondutiable buying commission, in connection with the fact that the charges were made by the seller of the goods and found the gross sum the dutiable value of the goods, the inquiry was concluded.—*U. S. v. Brodie* (Ct. Cust. Appls.), T. D. 35438; G. A. Ab. 37206 reversed.

It is here claimed that a nondutiable item was included in the entered value through clerical error. This error was held to be manifest and the protest sustained.—Ab. 37206; reversed in T. D. 35438 (Ct. Cust. Appls.) supra.

Commission—Duress.

DURESS.—The importers were constrained to include the commissions in dispute in the entered value of the merchandise; otherwise their entries would not have been received, but simply returned to them. This constituted duress.

COMMISSIONS.—WHEN NONDUTIABLE.—The shippers in the Vandegrift case were purchasing agents who bought the merchandise in foreign markets on cabled orders. The commissions charged for this service and included in the invoices were true nondutiable purchasing commissions in fact and in law.

FAILURE TO PROTEST DURESS.—In the Vandiver case the commissions were averred to be nondutiable in character, but no claim of duress in any form was made in the protest. The protestant was called upon to impeach the validity of the entries themselves and to notify the collector of the grounds of such impeachment, and failing in this the assessment must stand.—*Vandiver v. U. S.* (Ct. Cust. Appls.), T. D. 35327; Ab. 35946 (T. D. 34571) reversed and Ab. 35834 (T. D. 34548) affirmed.

The question here arises over the importation of certain woolen goods from Bradford, England, embraced in numerous invoices and entries. These invoices include an item of commissions at 3 per cent, which, it is claimed by the importers, should be deducted from the total invoices and no duty assessed thereon for the reason that these commissions were paid to the agent of the purchaser as a commissionaire for purchasing the goods. Duty has been assessed upon the entered value, which includes the commissions, but the importers claim exemption for the items of commissions because compelled to make entry including such items, setting up duress in the protests. Protest overruled.—Ab. 35946 (T. D. 34571).

Protests overruled claiming that an item of commission should not have been included in the dutiable value of certain merchandise.—Ab. 35834 (T. D. 34548).

The importer may, in view of possible subsequent proceedings, register with his entry his claim as to the true valuation, and for the collector to refuse this privilege might be duress. But to constitute duress the proof must show a substantial right had been denied.

In the case here there is no evidence that the goods are ever sold in the open markets of the country of exportation at less than the price including the commission in controversy, and the requirement that this should be added to make market value was not to deprive the importer of any substantial right. The requirement, accordingly, did not constitute duress.—*Batten & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 34975; (G. A. Ab. 34856) T. D. 34201 affirmed.

It is here claimed that the importers were compelled by duress to write upon the entry in connection with the so-called item of commissions "add to make

market value" instead of "add 2½ per cent commission." Protests overruled. Ab. 33616 (T. D. 33738) noted.—Ab. 34856 (T. D. 34201).

Jurisdiction of Appraiser Over Packing Charges.—It being the duty of the collector to fix the packing charges, any action of the appraiser relative thereto must be held to be either advisory or extra-official. The addition of packing charges, therefore, does not raise the per se value, and hence the provisions of subsection 7 of section 28 do not apply. *U. S. v. Spingarn Bros.* (5 Ct. Cust. Appls.), —; T. D. 34002).—T. D. 34726 (G. A. 7595).

Manifest Clerical Error.—There was nothing before the collector at the time of liquidation which would enable him to determine whether or not the item in question should or should not be included within the dutiable value of the merchandise, and in dealing with it there might be an error in judgment committed, but there could be no manifest clerical error. *U. S. v. Nozaki Bros.* (5 Ct. Cust. Appls., 286; T. D. 34471).—*U. S. v. Rice* (Ct. Cust. Appls.), T. D. 34472; (G. A. Ab. 33927) T. D. 33816 reversed.

There was nothing before the appraiser at the time of appraisement nor was there anything before the collector at the time of liquidation indicating the character of these items that were allowed as nondutiable. There was no manifest clerical error for correction. *Thomsen v. U. S.* (5 Ct. Cust. Appls., 69; T. D. 34100).—*U. S. v. Nozaki Bros.* (Ct. Cust. Appls.), T. D. 34471; (G. A. Ab. 33927) T. D. 33816 reversed.

U. S. v. Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437) and *U. S. v. Wyman* (4 Ct. Cust. Appls., 264; T. D. 33485) followed as to manifest clerical errors. Protests sustained.—Ab. 33927 (T. D. 33816); reversed in T. D. 34471, *supra*.

Duress.—The importers had been warned that the entered value of their brierwood was lower than that of other importers, and that unless the value was advanced penalties for undervaluation would be exacted. The importers were by this warning required to do nothing more than the law itself obliged; they were subjected to no unlawful demand and consequently to no duress.—*Colonial Import & Export Co. v. U. S.* (Ct. Cust. Appls.), T. D. 34190; (G. A. Ab. 31821) T. D. 33304 affirmed.

It appears from the record that the goods were regularly appraised and liquidation had upon the appraised value. No appeal was taken to a single general appraiser or a board of three general appraisers. It appears from the evidence that the importer had been bringing these goods into this country previous to these importations. He was advised by the examiner at an interview that his entered values were too low, and that they would be raised by the examiner if he, the importer, did not raise them on entry. There is no claim that any influence was brought to bear by the collector upon entry, or that the importer was prevented, by anything done by the Government officers at the time of entry from entering his goods at any price he saw fit. There was no duress which will in any way vitiate the proceedings in this case.—Ab. 31821 (T. D. 33304).

Manifest Clerical Error.—The evidence of the admitted clerical error here was before the importers at the time they made entry. Subsequently the error in valuation was disclosed to the appraiser. These facts do not constitute a case of manifest clerical error. *U. S. v. Swedish Produce Co.* (4 Ct. Cust. Appls., 223; T. D. 33437); *U. S. v. Wyman* (Ibid., 264; T. D. 33485); *U. S. v. Proctor* (5 Ct. Cust. Appls., 44; T. D. 34091).—*U. S. v. Bayersdorfer & Co.* (Ct. Cust. Appls.), T. D. 34134; (G. A. Ab. 32999) T. D. 33594 reversed.

There was a mistake made in the invoice in stating the cost of the wool of the importation. To constitute manifest clerical error, this must be apparent to the appraising officers or collector at the time of liquidation and upon the

record itself. This is *stare decisis*. There was nothing in the record here to show the appraising officers or collector that the error was caused by an inaccurate statement of the price of the wool. *U. S. v. Swedish Produce Co.* (4 Ct. Cust. Appls., 223; T. D. 33437); *U. S. v. Wyman & Co.* (4 Ct. Cust. Appls., 264; T. D. 33485); *U. S. v. Proctor Co.* (5 Ct. Cust. Appls., 44; T. D. 34091; Hampton, jr., & Co. v. U. S. (5 Ct. Cust. Appls., 51; T. D. 34093).—*Thomsen & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 34100; (G. A. Ab. 33156) T. D. 33660 affirmed.

These automobile tires were sold and imported to replace defective tires at a reduced rate. The brokers made the entry, following the invoice, without adding anything to the invoice price to make market value. This was not a clerical error. Subsection 7 of section 28 plainly requires, if it is desired to add to the invoice value to make market value, that this should be done at the time of making entry and not afterwards. *U. S. v. Swedish Produce Co.* (4 Ct. Cust. Appls., 223; T. D. 33437; *U. S. v. Wyman*, 4 Ct. Cust. Appls., 264; T. D. 33485).—*U. S. v. Proctor Co.* (Ct. Cust. Appls.), T. D. 34091; (G. A. Ab. 31245) T. D. 33160 reversed.

Importers claim they overstated the value of the merchandise in a pro forma invoice, being misled by an error in the transmission of a cable message from their London office. The appraiser appraised the merchandise at the value stated in the pro forma invoice, and the collector liquidated thereon. It is held that this is not manifest error in the appraisal or assessment, and can not be reviewed upon protest to the board of classification.—*U. S. v. National Steam Navigation Co., Ltd.* (Ct. Cust. Appls.), T. D. 33915 (G. A. Ab. 31167); T. D. 33145 reversed.

Samples Held Dutiable as Appraised.—The board has uniformly held that the remedy of an importer is to appeal to reappraisal in order to determine the correct value of his imported merchandise, and that such question can not be raised by protest.

In *Badische v. U. S.* (4 Ct. Cust. Appls., 374; T. D. 33535) it was decided by the Court of Customs Appeals that the initial step to obtain relief should be an appeal to reappraisal and not by protest.—T. D. 33619 (G. A. 7479).

Clerical Error—Decisions Reviewed.—Under the recent decisions of the United States Court of Customs Appeals the Board of United States General Appraisers has power to correct only such clerical errors as are manifest and apparent upon the face of such papers as are before the collector at the time of liquidation of the entry. The administrative and judicial decisions on this subject reviewed.—T. D. 33590 (G. A. 7476).

Duress.—The importers were embarrassed in stating the actual market value of their merchandise, but they elected to enter the woollens and cottons here with the additions of a penny a yard for damage and 10 per cent for shrinkiñg. A notation that this was done under duress does not make a case of duress. No unlawful demand was made on the importers, and what they did was done freely and voluntarily to fix the entered value of the goods.—*Van Ingen & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 33520 (G. A. 7433); T. D. 33193 affirmed.

The fear of possible additional duties, depending upon the result of reappraisal proceedings, does not constitute duress.—T. D. 33193 (G. A. 7433).

Clerical Error.

The commission charged abroad, disputed here as dutiable, was entered on the invoice in the words and figures intended by the writer; they received from the collector the interpretation they were intended to take when the invoice was made out. This is not a case of manifest clerical error. *U. S. v.*

Bennett et al. (2 Ct. Cust. Appls., 249; T. D. 31975).—U. S. v. Wyman & Co. (Ct. Cust. Appls.), T. D. 33485; (G. A. Ab. 31113) T. D. 33106 reversed.

AMOUNT OF DUTIES ON REVIEW.—The customs administrative law, subsection 14, vests jurisdiction in the Board of General Appraisers to review the decision of any collector of customs as to "the rate and amount of duties chargeable upon imported merchandise."—U. S. v. Benjamin et al. (72 Fed., 51).

MANIFEST CLERICAL ERROR, WHAT IS NOT.—Obviously there is a broad distinction between clerical error and manifest clerical error. In this case the distinction is statutory, affording a remedy for the latter, but not for the former.

It appears that the facts establishing the undervaluation of this merchandise were known to the importers at the time the entry was made. In view of the importers' knowledge the undervaluation does not present a case of manifest clerical error.

What constitutes a manifest clerical error, as distinguished from clerical error in the generic sense of the term, has been frequently the subject of adjudication. In *Hermance v. Ulster Co. Suprs.* (71 N. Y., 481, 485, 486), the court said:

The errors which may be corrected are "manifest" errors; not errors which may be shown to have been committed by extrinsic evidence or may be proved to the satisfaction of the court. But "manifest," as used here, means something which is apparent by an examination of the assessment roll or return, needing no evidence to make it more clear.

The Supreme Court of Vermont defines manifest as "obvious, view clearly, apparent, plain." *Lapham v. Curtis* (5 Vt., 371-377).—U. S. v. *Swedish Produce Co.* (Ct. Cust. Appls.), T. D. 33437; (G. A. Ab. 29501) T. D. 32760 reversed.

Additional Duty—Currency.—The merchandise was invoiced in Spanish pesetas upon a silver basis and the value of the silver peseta of Spain certified to on the back of the consular invoice. It was entered upon the value stated in the invoice, and upon his entry paper the importer translated the pesetas into United States dollars, evidently adopting in his calculation the value of the gold peseta. The merchandise was advanced by the appraiser and the general appraiser, both adopting the silver peseta. Under the operation of subsection 7 of section 28 this would render the importer liable to the additional duty provided for therein. The importer is not required by law to calculate the value of foreign money in making his entry. The invoice being in silver pesetas, the entry must be treated as being in silver pesetas, there being nothing to indicate the contrary.—Ab. 33350 (T. D. 33695).

Excess Goods—Additional Duty.—The facts are that 58 cartons of artificial flowers found in packages of imported merchandise had not been invoiced or entered; in other words, these 58 cartons constituted excess merchandise.

The question as to whether or not the provisions for additional duty under subsection 7 should apply to excess merchandise, like many questions of customs law, is one which, as a result of not adhering closely to principle but rather letting decisions be controlled too much by the doctrine of *ex necessitate rei*, is now somewhat in confusion. *Joseph Herazy's case*, G. A. 5804 (T. D. 25645), never appealed from. *Leeming & Co.'s case*, G. A. 6315 (T. D. 27216). *Leeming & Co.'s case* was appealed (*Leeming v. U. S.*, 153 Fed., 489; T. D. 27986) and reversed, apparently upon the ground that the rule of law held by the board to apply would leave the door open to fraud. Thereafter *Downing & Co.'s case*, G. A. 6957 (T. D. 30207) followed, as *Leeming v. U. S.*, *supra*. In the meanwhile, the United States Court of Customs Appeals having been established,

Downing & Co.'s case was appealed to that court, and the board was again reversed. *Downing v. U. S.* (2 Ct. Cust. Appls., 278; T. D. 32033). The latter decision carried the law back to where it was stated in Joseph Herazy's case, *supra*. The protest is therefore sustained and the collector directed to reliquidate the entry, omitting the additional duty as assessed by reason of the excess merchandise found in the importation.—Ab. 33186 (T. D. 33660).

Commissions—Duress.—Protestant claims that the inclusion of an item of commissions in the entered value was made under duress in that it was included for the sole purpose of evading the payment of additional duty, as he felt assured that the appraiser would include it upon appraising the merchandise, though the same was not needed to make market value.

The entry was made voluntarily, and the collector is bound to assess duty upon the entered value.—Ab. 31056 (T. D. 33106).

Duress.—The importers claim that they entered the goods in question under duress because a reappraisal proceeding was pending on this class of goods in which the United States appraiser had advanced value by disallowing a 5 per cent discount, and they state they were forced to enter goods without said discount of 5 per cent in order to avoid additional duties should the advance be sustained on appeal to reappraisal proceedings. This circumstance does not set forth such a state of affairs as will relieve the importers, on the theory of duress, from the result of their action in entering the goods as they did.—Ab. 29314 (T. D. 32714).

Deduction on Entry to Make Market Value.—In making entry of certain straw hats the importers made a deduction from the invoice value of the first item and additions to other items on the invoice to make market value. The appraiser appraised these items at the value noted by the importers. The collector, however, denied the right of the importer to avail himself of any deduction from this invoice value because he failed to state on entry that he made the deduction to make market value.

Subsection 7 of section 28 of the tariff act of 1909 gives the importer the right to decrease or advance the invoice value of his merchandise on entry to make market value. It does not require him to state that he does this for that purpose. That should be apparent from the very fact, particularly when, as in this instance, the appraised value coincides with the value fixed by the importer upon entry.—Ab. 27998 (T. D. 32346).

Additional Duty—Value.—The question in this case is as to the amount upon which an additional duty for undervaluation shall be reckoned.

The merchandise was entered at a value of 900 pesetas, or \$174 in United States currency. On reappraisal proceedings it was advanced by a general appraiser to a value of \$193, which is an advance of about 10.9 per cent over the entered value of \$174. Additional duty has been taken by the collector on the basis of an advance of 22 per cent, arrived at by taking as the entered value the amount of the invoice as reckoned in depreciated currency, \$158. The importers entered the goods on the basis of the standard gold value of the peseta, or \$174 for the amount of the invoice on that basis, and claimed that this entered amount should constitute the basis upon which additional duty should be reckoned. Their claim is correct.—Ab. 26349 (T. D. 31832).

Pro Forma Invoice.—Entry in this case was made upon a pro forma invoice. Four days after the making of this entry the consular invoice was received and presented to the appraiser, who had not yet appraised the merchandise.

There was undoubtedly an error in the pro forma invoice, which was corrected by the consular invoice presented to the appraiser four days later. The merchandise was appraised at 2,735 marks, and this is the value upon which

the collector should have assessed duty. The last clause of subsection 7 of section 28 of the tariff act of 1909, which prohibits the collector from assessing duty upon an amount less than the entered value, must be construed in this case to apply to the value as stated in the consular invoice.—*Ab. 24685* (T. D. 31263).

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Seizure for Undervaluation—Laches.—The net proceeds of a sale of imported property seized by the United States for undervaluation through a mistake of fact belong to the importer and not to the United States.

Where the proceeds of the sale remain in the registry of the court, the Government having suffered no loss, a delay of five years held not to be such laches as to debar the importer from maintaining a libel of review.—*U. S. v. One Case Chemical Compound* (D. C.), T. D. 33416.

Additional Duty on Excess Goods.—An American concern with a London branch closed that branch and directed that such supplies as had been forwarded from this country and not consumed should be returned to the United States. Some goods of English manufacture were included in the consignment made up to be returned, but these last were not declared at the home port of entry, apparently through ignorance or mistake, for there is no imputation of fraud. The English goods were fairly to be treated as excess goods and not subject to an additional duty over and above that to which they would have been subject if regularly imported. *U. S. v. Leeming* (153 Fed. Rep., 489), distinguished.—*Downing & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 32033; (*G. A. 6957*) T. D. 30207 reversed.

Under the decision of the circuit court in *U. S. v. Leeming* (153 Fed. Rep., 489; T. D. 27986), the additional duty provided for in section 32 of the tariff act of 1897 should be assessed and collected on excess merchandise not invoiced and not entered.—T. D. 30207 (*G. A. 6957*).

Recovery of Duties by Action at Law.—Proceedings for the recovery of additional duties resulting from the action of the appraiser in making illegal additions to the entered value to make market value must be by appeal to reappraisement by a general appraiser and a board of general appraisers, in accordance with the customs administrative act of June 10, 1890. Said act provides a complete remedial system for the correction of errors in the collection of duties, and the remedy afforded by it is exclusive.—*Gulbenkian v. U. S.* (C. C. A.), T. D. 31732; T. D. 30295 (C. C.) affirmed.

Commissions—Duress.

COMMISSIONS PAID APPEARING IN VALUATION ON ENTRY.—Reaffirming the doctrine of *Stein & Co. v. U. S.* (T. D. 31007), that an item in an importer's invoice showing he had paid a commission to a commissionaire had been included there under duress, it is now further held that the figures on entered valuation certified to the appraiser by the collector wherein this payment was included did not constitute an opinion, judgment, and voluntary act of the importer, but something entirely different; the importer has been without a day in court when by a penalty threatened he is compelled to substitute the judgment of another for his own in declaring the value of his goods, and he is irremediably denied a legal right.

MEMORANDUM SHOWING IMPORTER'S VALUATION.—A memorandum slip attached to each invoice that showed the change the importer had wished to make in the valuation as entered is not such an entry as could be taken to comply with the statute. The importer was entitled to make upon the entry itself his pro-

test against the addition by the collector of commissions paid as a part of the dutiable value.—*Stein & Co. v. U. S. (Ct. Cust. Appls.)*, T. D. 31525; T. D. 31007 (Ct. Cust. Appls.) affirmed, and (G. A. 6742) T. D. 28886 reversed.

COMMISSIONS PAID A COMMISSIONAIRE.—A commission paid a commissionaire for receiving goods, comparing with samples, procuring cases, packing and shipping these goods, is a commission simply and as such is nondutiable.

DURESS.—An item amongst others in an importer's invoice showing a commission had been paid a commissionaire is held to have been placed in the invoice under duress, it appearing that under the customs regulations the omission of this item by the importer would be followed by its immediate inclusion and further by the exaction of a penalty for its omission.

APPRAISEMENT.—It is not within the province or jurisdiction of this court to make a finding of the market value of imported goods.—*Stein & Co. v. U. S. (Ct. Cust. Appls.)*, T. D. 31007; reaffirmed by T. D. 31525 (Ct. Cust. Appls.), and (G. A. 6742) T. D. 28886 reversed.

SERVICES OF COMMISSIONAIRE.—Commissions paid to a commissionaire for services as commissionaire are nondutiable.

ADDITION UNDER APPREHENSION.—An invoice item of commissions, not necessarily a part of the wholesale market value of the goods, but included in the entered value by the importer simply because he is apprehensive that they might be added by the customs officers and a penalty exacted, is not added under duress, and the collector is authorized to collect duty thereon.

APPRAISEMENT.—The return of the appraiser was as follows: "Full foreign market value is covered by entered value, which includes item X." Said item appeared upon the invoice as "Commissions, 2½ per cent." This does not mean that the appraiser assumes to assess duty upon commissions as such. He merely acts within his legal duty to find the foreign market value. That the amount of commissions is included in the market value is simply incidental.—T. D. 28886 (G. A. 6742); reversed by T. D. 31007 and T. D. 31525 (Ct. Cust. Appls.), *supra*.

Invoice Value.

RATE ON ENTRY OF FOODS DEPRECIATED IN VALUE.—Where imported merchandise offered for entry has depreciated from its invoice value, the rate of duty is to be determined by considering not alone section 19 of the customs administrative act of 1890, but effect must be given to section 7 of said act and the duty should not be assessed in any case upon an amount less than the invoice or entered value.

TREASURY REGULATION OF APPRAISEMENT, FORCE OF.—A regulation issued by the Treasury Department permitting entry by appraisement without invoice is not valid, in so far as the regulation might be construed to abrogate section 7 of the customs administrative act of 1890, requiring that in no case shall an assessment be fixed on an amount less than the invoice or entered value.—*Joseph Ullman v. U. S. (Ct. Cust. Appls.)*, T. D. 31032; T. D. 30298 (C. C.) and (G. A. 6918) T. D. 29883 affirmed.

There is no statute granting to the Treasury Department the power to adopt article 1450, Customs Regulations of 1899, permitting entry by appraisement without invoice, where the invoice value greatly exceeds the general market value at the time of exportation.

The provisions in section 7 and 19, respectively, of the customs administrative act of 1890, that "duty shall not be assessed upon less than the invoice value," and that "duty shall be assessed upon the actual market value at the time of exportation," when construed together mean that the dutiable value shall in no case be fixed at less than the purchase price of the goods; and

where subsequently to the purchase of goods for import to the United States the market value of such goods decreases the goods are nevertheless dutiable on the basis of the price paid.—*Ullman v. U. S. (C. C.)*, T. D. 30298; (G. A. 6918) T. D. 29883 affirmed.

APPRAISEMENT ENTRY.—The action of the Secretary of the Treasury in refusing to approve an application to entry by appraisement without invoice is not subject to review by this board or the courts.

INVALID APPRAISEMENT; WHEN NOT AVAILABLE.—An invalid appraisement will not avail an importer in a protest against the liquidation of an entry where the collector assessed the merchandise for duty upon the amount of the invoice and entered value in accordance with the concluding provision of section 7 of the customs administrative act of 1890.

DUTIABLE VALUE.—The concluding language of section 7 of the customs administrative act of 1890, "duty shall not, however, be assessed in any case upon an amount less than the invoice or entered value," held to modify and control all other provisions of said act relative to the value of merchandise upon which duty shall be assessed, including the provision of section 19 that "duty shall be assessed upon the actual market value or wholesale price at the time of exportation to the United States."—T. D. 29883 (G. A. 6918).

Entered Value—Shortage.—The provision in section 7, customs administrative act of 1890, for an additional duty where the "appraised value exceeds the value declared in the entry," refers to the unit value rather than the total value; and where there is a shortage of goods, the percentage excess of the appraised value over the entered value should be ascertained by dividing the difference between the appraised value and the entered value (less the shortage) by such entered value less the shortage, or by dividing the difference between the unit entered value and the unit appraised value by the entered value of a unit when the same can be found.—T. D. 29876 (G. A. 6916).

Additional Duty.

Forfeiture proceedings in a district court for alleged undervaluation resulted favorably to the importer; but the collector assessed the additional duty provided in section 7, customs administrative act of 1890, for undervaluation, whereupon the importer secured a modification of the judgment, providing that the importation should be surrendered to the importer without the imposition of such additional duty. *Held*, that in the absence of proof that the court was without jurisdiction to make this modification the contrary would be presumed, and that, the matter being therefore *res adjudicata*, the imposition of the additional duty was illegal.—*U. S. v. Sommers (C. C. A.)*, T. D. 29852; T. D. 29167 (C. C.) affirmed.

ABSENCE OF WRONGFUL INTENT.—Section 7, customs administrative act of 1890, prescribing additional duty for undervaluation of imports, *Held*, not applicable to goods entered at an insufficient value but valued correctly in the consular invoice produced later, where there had been no wrongful intent on the part of the importers.—*Sommers v. U. S. (C. C.)*, T. D. 29167; (G. A. 6536) T. D. 27887 reversed.

Appraisement After Seizure.

JURISDICTION OF UNITED STATES DISTRICT COURTS.—Where goods have been seized under an order of the United States district court for forfeiture for undervaluation, the sole question to be determined under section 32, tariff act of 1897, is whether such undervaluation was fraudulent. Such court, however, is without jurisdiction to determine the rate and amount of duty assessable on such imported merchandise.

RIGHT OF REAPPRAISEMENT.—Where imported goods have been seized for undervaluation, this fact does not deprive the consignee or owner of the right of reappraisement given in section 13 of the customs administrative act of 1890, and the same principle would apply with equal reason to the right of the collector or surveyor of customs to call for a reappraisement.

ADDITIONAL DUTIES ASSESSABLE.—The additional duties provided for under section 32, tariff act of 1897, are assessable, except in cases arising from a manifest clerical error, irrespective of any question of fraudulent undervaluation on the part of the importer.—T. D. 27887 (G. A. 6536).

Addition to Make Market Value—Excessive.—In order to make what he considered market value, and as permitted by section 7, customs administrative act of 1890, as amended by section 32, tariff act of 1897, an importer added certain invoice items to the invoice value of his goods. On reappraisement it was found that the invoice value was correct and that the addition had been unnecessary. *Held*, nevertheless, that duty could not be assessed on less than the entered value without violating the provision in said section that "duty shall not, however, be assessed in any case upon an amount less than the entered value."

Where an invoice specifies certain items distinctly from the per se value of the article invoiced and the importer in entering the importation states that the amount of such items is added to make market value, such items then constitute a part of the entered value just as though such sum had been included in the per se value.—*Daloz v. U. S. (C. C.)*, T. D. 29807; *Ab. 19658 (T. D. 29267)* affirmed.

Entered Value—Addition on Entry Resulting in Lower Duty.—The provision in section 7, customs administrative act of 1890, that duty shall not be assessed on less than the entered value of merchandise, is held to cover a case where the addition by an importer on entry results in a lower duty than would have accrued on the basis of the invoice and appraised value.—T. D. 29557 (G. A. 6867).

Undervaluation—Shipment of Better Goods Than Ordered.—Through an alleged clerical error of the shippers, merchandise of a better grade than that ordered was shipped, being invoiced as of the description and value of the cheaper grade order. Being entered on the basis of this incorrect invoice value, the merchandise was subjected to the additional duty provided for undervaluation. *Held*, that no relief from this duty could be afforded on the ground of clerical error.—*Magnus v. U. S. (C. C. A.)*, T. D. 29522; T. D. 28867 (C. C.) and (G. A. 6614) T. D. 28231 affirmed.

Undervaluation—Shipment of Wrong Goods.—The penalty prescribed for undervaluation was applied where a shipment of oil was invoiced and entered at the price of a cheaper oil. The importers alleged that the cheaper was ordered, but that by mistake the more valuable had been shipped. *Held*, that, this was not a clerical error from the consequences of which the importers might be relieved; also that relief should not be granted by reason of the encouragement which would be given for collusion for fraudulent purposes between shippers and importers.—*Magnus v. U. S. (C. C.)*, T. D. 28867; (G. A. 6614) T. D. 28231 affirmed.

Clerical Error—Shipment of Wrong Goods.—Where merchandise different from that ordered and invoiced is shipped and is entered for duty as invoiced it does not constitute such a clerical error as the Board of General Appraisers can correct.

If an importer receives and accepts merchandise other than and different from that ordered by him and invoiced to him, he assumes all the obligations

in the payment of duty and additional duty which the law imposes upon him.—T. D. 28231 (G. A. 6614).

Additional Duty—Merchandise Subject to Specific Duty.—If the question whether merchandise is subject to a specific or an ad valorem duty, or both, is determined by the value thereof, an appraisement is essential, and where that appraisement exceeds the entered value the additional duty provided in section 32, tariff act of 1897, attaches as a matter of law, regardless of whether the appraisement brings the merchandise into the class upon which an ad valorem duty may be levied. *Pings v. U. S.* (72 Fed. Rep., 260); *Hoeninghaus v. U. S.* (172 U. S., 622).—T. D. 29427 (G. A. 6840).

Notice of Advance to Wrong Address.—Where a notice of additions to the invoice value, on appraisal, was sent to the address given by the importer in his entry, the Government official exercised due diligence, and the importer can not object to the assessment of duty on the basis of such advance, on the ground that the wrong address was given.—*U. S. v. Independent Importing Co. (C. C.)*, T. D. 29122; (G. A. 6621) T. D. 28250 reversed.

Goods in Excess—Invoice Description.—An importation of framed paintings was invoiced simply as "paintings," this being in accordance with a long-standing practice to so describe paintings in frames, and the invoice value was sufficient to include both the paintings and the frames. *Held*, that the frames were not articles "not specified in the invoice," within the meaning of section 2901, Revised Statutes, and that it was therefore illegal to add their value to said invoice value as prescribed in said section.

It appeared that the description of merchandise in an invoice as "paintings" was intended to include the frames containing the paintings; that it was usual to so invoice framed paintings; and that the invoice value was sufficient to cover the frames as well as the paintings. *Held*, that under section 7 of customs administrative act of 1890, forbidding the assessment of duty on "less than the invoice value," the invoice value in this case is not required to be ascribed wholly to the paintings, but should be considered to cover the frames also.—*U. S. v. Hensel (C. C.)*, T. D. 28537.

Clerical Error in Making Pro Forma Invoice.—An importer, in making an entry on a pro forma invoice, mistook the rupee sign for the dollar mark and entered his importation on that erroneous basis. *Held*, that this mistake constituted a clerical error.

Section 7, customs administrative act of 1890, forbidding the assessment of duty on an amount less than the invoice value, does not require that a collector of customs should assess on the basis of a mistaken value given in a pro forma invoice when he has before him a consular invoice stating the correct value. He conforms to the statute in assessing upon an amount not less than that in the latter invoice.

An importer entering on a pro forma invoice gave, by clerical error, an excessive value to the merchandise, but the value in the consular invoice, which was before the collector when he liquidated, was correct. *Held*, that duty should have been assessed on the basis of the value in the latter invoice.—*U. S. v. Muller (C. C. A.)*, T. D. 28518; T. D. 27895 and Ab. 12452 affirmed.

Invoice Packed With Merchandise.

IMPORTER NOT ALLOWED TO EXAMINE INVOICE.—The offer of an importer to enter his merchandise at whatever might be the invoice value thereof, if permitted to open the package and examine the invoice, is tantamount to an entry at that value.

ENTRY UNDER DURESS.—Where the authorized customs officials refuse to permit an importer to open a package in order to see the invoice, that he might

enter the merchandise at its correct value, he not having any invoice of it and not knowing its exact value, but require him to make an entry before the package is opened, and that entry is below the invoice value, as found upon opening the package and examining the invoice, additional duty should not be assessed under the provisions of section 7, customs administrative act of 1890, as amended by section 32, tariff act of 1897.—T. D. 28495 (G. A. 6676).

Entry on Pro Forma Invoice and Abandonment of Consular Invoice.—

ADVICE OF CUSTOMS CLERK.—Where an importer included a certain invoice item in his entered value because advised so to do by the entry clerk at the customhouse, this does not necessarily constitute an entry under duress.

GOODS IMPORTED FROM ONE COUNTRY THROUGH ANOTHER.—Merchandise imported into Canada from another country was shipped to the United States on an invoice certified before a Canadian consul, which contained an item of the amount of the Canadian duty; *Held*, that such item was properly included in the entered value.

ABANDONMENT OF CONSULAR INVOICE.—Where an importer receives a consular invoice showing his goods to be exported from the country of immediate exportation, and he believes that they should be invoiced as coming from the country of origin, he may abandon the consular invoice and enter on a pro forma invoice under bond for the production of a correct consular invoice.—T. D. 28424 (G. A. 6664).

Addition on Entry Must Be in Definite Terms.—In reference to section 7, customs administrative act of 1890, providing that importers may at the time of entry add to the invoice value to raise it to the actual market value of the merchandise at the time of exportation, *Held*, (1) that such addition should be stated in the entry in such definite terms that its amount can be ascertained by the customs officers, and (2) that, where importers on entry noted that a certain sum should be added, less certain charges unspecified in amount, the addition should be considered as of the gross sum thus stated, reduced, however, by the amount of such charges as were officially known to the customs officers.—*Woodruff v. U. S. (C. C.)*, T. D. 28207.

Additional Duty Applies to Goods in Excess.—The quantity of an importation which had been undervalued proved to be somewhat greater than the amount specified in the invoice. *Held*, that, in assessing the additional duty for undervaluation, as provided in section 7, customs administrative act of 1890, it should not be limited to the quantity specified in the invoice, but should also be applied to the excess.—*U. S. v. Leeming*; *Leeming v. U. S. (C. C.)*, T. D. 27986; (G. A. 6315) T. D. 27216 reversed in part.

Cuban Internal-Revenue Tax—Duress.—Where an importer voluntarily includes in his entry an item of \$2 per thousand cigars exported from Cuba, which represents the internal-revenue tax levied on cigars sold in the domestic markets of that country, the action of the collector in liquidating the entry on the basis of the entered value is without error.

The circular of the Treasury Department (T. D. 25516) issued August 3, 1904, can not be regarded as putting collectors of customs under any duress so as to compel them involuntarily to add such item of \$2 to the invoice value of the merchandise to make market value.

The question of duress in making entries is properly stated by the Supreme Court in *Robertson v. Bradbury* (132 U. S., 491; 10 Sup. Ct. Rep., 158), which was followed by the board in the case of *Duncan & Moorhead*, G. A. 5994 (T. D. 26233), affirmed in principle by the circuit court, as reported in the case of *Acker, Merrill & Condit Co. v. U. S. (T. D. 26903)*.

Where an item of the above-named character may or may not constitute a part of the market value of imported merchandise according to the ascertained value of cigars sold in the principal markets of Cuba, the question of such value becomes one of appraisement by the proper appraising officer, and not one of mere classification by the collector.—T. D. 27537 (G. A. 6407).

Pro Forma Invoice—Consular Invoice.—It is the duty of the collector to assess duty upon important merchandise upon the value thereof as returned by the appraiser unless reappraisement has been duly asked for.

If the value of merchandise entered upon a pro forma invoice is approved by the appraiser it is equivalent to a finding by that officer that such is the wholesale market value of the merchandise; and the importer, if dissatisfied, has his remedy by appeal for reappraisement. The Board of General Appraisers can not grant him relief upon a protest, even when the consular invoice, duly filed with the collector, but not approved by the appraiser, shows a lower value than that stated in the pro forma invoice. *U. S. v. Commercial Cable Co.* (141 Fed. Rep., 473; T. D. 26494), *Bozzo's case*, G. A. 6108 (T. D. 26605), and *Geisenheimer's case*, Ab. 8963 (T. D. 26857), distinguished.—T. D. 27488 (G. A. 6398).

Application of Importer to Amend Entry.

DUTY OF COLLECTOR.—The failure of the collector to transmit to the Secretary of the Treasury an application by an importer to amend an entry under article 1449 of the Treasury regulations of 1899 does not present a question within the jurisdiction of this board.

JURISDICTION OF THE BOARD OF GENERAL APPRAISERS.—The importer entered certain merchandise upon a copy of the invoice which he secured from the collector. The regular consular invoice did not reach him until several days later. Upon the entry thus made the merchandise was regularly appraised and advanced in value and the penalty which the law prescribes under such circumstances was imposed. Against the exaction of this penalty the importer protests, claiming that if, at the time he made the entry, he had possessed the information which he afterwards obtained, he would have advanced the merchandise to its true market value; upon securing that information he made application to the collector to amend his entry. *Held*, that the Board of United States General Appraisers has no power or jurisdiction to grant relief in such a case.—T. D. 27487 (G. A. 6397).

Dutiable Value of Cuban Cigars—Duress.—Where certain cigars exported from Cuba are subject to an internal-revenue tax of \$2 per thousand and the market value of such goods in Cuba is ascertained to be the invoice value, less the internal-revenue tax, such tax is a nondutiable item, forming no part of such value, unless it is voluntarily included by the importer as such in making his entry.

Where the importers of such cigars offered to make entry of the merchandise so as to exclude from the value this internal-revenue tax, and this offer was refused by the collector, the addition of such tax being made a condition precedent to the acceptance of the entry by the collector, such entry held to be made under duress and is not binding on the importer. *Robertson v. Bradbury* (132 U. S., 491).—T. D. 27204 (G. A. 6309).

Commissions—Duress.

VOLUNTARY ADDITION UPON ENTRY.—Nondutiable items of commissions, if voluntarily added to the value of the merchandise by the importer in making his entry, become part of the dutiable value, under section 7 of the customs administrative act of June 10, 1890, requiring that "duty shall not be assessed in any case upon an amount less than the invoice or entered value."

It does not render such an addition less binding that the right of the customs officers to assess duties on such charge was disputed and in litigation when the entry was made, at least where the addition of the charge would not relieve the importer from any unlawful exaction.

FEAR OF INCURRING ADDITIONAL DUTY.—The mere apprehension on the part of importers of incurring additional or penal duties does not make such an addition in the entry coercive, where slight investigation would have shown that it was not the practice of the customs officers to impose additional duties in such cases.—T. D. 26920 (G. A. 6234).

Undervaluation of Coverings—Lemon Boxes.—Boxes containing lemons, which are treated as a distinct commodity in the tariff act, being dutiable under a separate provision from the lemons, are "articles of merchandise" within the meaning of section 7, customs administrative act of 1890, providing an additional duty on "any article of imported merchandise" which shall have been undervalued.—*Phelps v. U. S. (C. C.)*, T. D. 26822; (G. A. 559) T. D. 11200 affirmed.

Dutiable Charges and "Appraised Value."—Transportation charges from the place of production to the principal market, when added by appraising officers to the entered value of merchandise, can not be excluded in determining whether additional duty for undervaluation accrues, under section 7, customs administrative act of June 10, 1890, upon the theory that, although properly dutiable charges, they form no part of the "appraised value" of the goods per se.—T. D. 26749 (G. A. 6162).

Pro Forma Invoices—Additional Duties.—Where imported merchandise is entered upon a pro forma invoice and has been advanced in value on appraisal, additional duties will be assessed under section 7 of the customs administrative act of 1890, as amended by section 32 of the tariff act of 1897, in the same manner and to the same extent as if the merchandise had been entered by a duly certified invoice.—T. D. 26691 (G. A. 6146).

Consigned and Purchased Goods—Advances on Entry to Make Market Value.—Where goods have been bought in Germany by a member of a partnership resident in this country, and are shipped to the United States to be sold on joint account of the partnership, the importation is a consignment and not a purchase within the meaning of the customs administrative act.

Section 7 of the customs administrative act of 1890, as amended by section 32 of the present tariff act of 1897, authorizes additions upon entry to the invoice value of imported goods so as to raise the same to market value only where such merchandise has been actually purchased, as distinguished from that obtained otherwise than by actual purchase.

Where goods are in fact consigned and not purchased, whatever may be the form of the invoice, neither the appraising officer nor the collector can lawfully consent for the importers to made additions to the entered value, which is expressly forbidden by the statute.

The Government can not be legally estopped by the unauthorized action of its officers who attempt to exercise functions beyond their statutory jurisdiction.

Where the primary liquidation of an entry is erroneous the collector has lawful authority to correct the error by a reliquidation within one year from the date of the entry.—T. D. 26667 (G. A. 6135).

Parcel Post—Legality of Additional Duties.—Where an importation of merchandise is made through the parcel post under the parcel-post convention between the United States and Mexico, ratified April 28, 1888 (25 U. S. Stat. L., p. 1428), which provides for the admission to the mails of certain

articles of merchandise and mail matter, no additional duty can be assessed by the collector for undervaluation under the provisions of section 7 of the customs administrative act of 1890, as amended by section 32, tariff act of 1897, there being no provision made for the formal entry of such merchandise.—T. D. 26664 (G. A. 6132).

Clerical Error—Omission of Dutiable Charge.—On appraisement of imported merchandise, its entered value was advanced to an extent that entailed the assessment of the increased duty provided for undervaluation, from the payment of which the importers sought to be relieved on the ground that through clerical error they had omitted a dutiable item from the entered value. It appeared that the agents for the importers, in preparing the entry, made their own selection of the items which they considered dutiable and of those not dutiable. *Held*, that such an omission under such circumstances could not be considered a clerical error.—*Fuerst v. U. S. (C. C.)*, T. D. 26658.

Pro Forma and Consular Invoices.—Where entry is made upon a pro forma invoice and bond given for the production of a consular invoice, and such consular invoice is produced by the importer and the values therein stated found to be correct by the appraising officer, the collector is bound to liquidate the entry upon the basis of the values declared in the consular invoice and not those in the pro forma invoice. *Following In re Commercial Cable Co.*, G. A. 5856 (T. D. 25801), affirmed in *U. S. v. Commercial Cable Co.* (reported in T. D. 26494).—T. D. 26636 (G. A. 6126).

Additional Duties—Forfeiture.—The obligation to pay duty is incurred by the act of importing merchandise, and is not relieved by the violation of some provision of law that imposes the penalty of forfeiture.

The additional duty of 1 per cent of the total appraised value of imported merchandise for each 1 per cent that such appraised value exceeds the value declared in the entry is not in the nature of a penalty, hence may be collected from the importer the same as the regular duty where the merchandise has been forfeited for undervaluation. T. D. 23606; *U. S. v. 1,621 Pounds Fur Clippings* (106 Fed. Rep., 161), and *U. S. v. Gray* and *U. S. v. Baldwin* (107 Fed. Rep., 104).—T. D. 26612 (G. A. 6115).

Percentage of Additional Duties—How Estimated.—The percentage of additional duties imposed on imported goods for undervaluation under section 7, customs administrative act of June 10, 1890, is to be computed on the basis of the entered value of the merchandise, which should include the cost of the coverings and the packing, as provided in section 19 of said act.

The percentage so ascertained becomes the rate of additional duty to be assessed upon the total appraised value of the merchandise.—T. D. 26243 (G. A. 6004).

Dutiable Value of Cigars From Cuba—Duress.—Where an importer in making an entry of cigars imported from Cuba voluntarily adds to make the market value \$2 per thousand, which represents the internal-revenue tax levied on cigars in Cuba, such item is to be included in the dutiable value of such merchandise under the provisions of section 7, customs administrative act of June 10, 1890.

An allegation in a protest that such entry was made under duress will not be sustained in the absence of satisfactory evidence bringing the case within the rule declared in *Robertson v. Bradbury* (132 U. S., 491; 10 Sup. Ct. Rep., 158).—T. D. 26233 (G. A. 5994).

Commissions—Entered Value.—Under section 7 of the customs administrative act the entered value of imported merchandise, when higher than the

invoice value, is not only the minimum value upon which ad valorem duties must be assessed but will determine the classification of the goods rather than any lower invoice or appraised value, when the classification is dependent upon or regulated in any manner by value. *Kimball v. Collector* (10 Wall., 436); *Roebeling v. U. S.* (77 Fed. Rep., 601) followed.

Nondutiable commissions appearing in an invoice become part of the entered or dutiable value when voluntarily included by the importer upon entry.—*T. D.* 25764 (*G. A.* 5845).

Clerical Error.—Where an importer, on entering goods, presents an entry and invoice, the former of which omits some dutiable item while the latter sets out such item, and there are no circumstances indicating an intention to evade the law, the case may be considered one of manifest clerical error, and the importer may be relieved from an assessment of additional or penal duty in consequence of his omission. *Lawder v. Stone* (125 Fed. Rep., 809; *T. D.* 25001) followed.—*T. D.* 25579 (*G. A.* 5789).

Section 32, act of 1897, does not provide relief for every alleged clerical error, but only for such as are manifest.

An error in the entered value of merchandise arising from a miscalculation of the American equivalent of a foreign unit held not to be a manifest clerical error.—*T. D.* 25257 (*G. A.* 5667).

Sugar Undervaluation on Conditional Invoice.—Sugar was entered as of a stated value that was subject to correction according to quality as shown by polariscopic test. The appraised value of the sugar exceeded by more than 10 per cent such conditional value as stated, but did not so exceed it as corrected in accordance with the polariscopic test. *Held*, that this case is not within the provision in section 7, customs administrative act of June 10, 1890, for additional duty "if the appraised value of any article of imported merchandise shall exceed by more than 10 per centum the value declared in the entry."—*Leaycraft v. U. S. (C. C.)*, *T. D.* 25465.

Liability of Consignee for Additional Duties.—Under section 32, tariff act of July 24, 1897, the fraudulent intent of the owner or of his authorized agent in entering the imported merchandise is an indispensable condition of the right of the Government to forfeit the goods for undervaluation.

An action to recover the additional duties accruing upon an undervaluation under section 32, tariff act of July 24, 1897, may be maintained against the consignee without proof of any fraudulent intent by the owner, the consignee, or the agent in making the entry. Good faith and innocence constitute no defense in such an action.—*U. S. v. Bishop (C. C. A.)*, *T. D.* 25093.

Invoice or Entered Value—Interest on Furs.—Although interest for the period antedating the last annual public sale of furs in the London market is not an element of the market value thereof, yet if an invoice or entry shall contain a charge for interest as a part of the actual price or value of such furs duty can not be assessed on a less amount. *Vantine v. U. S.* (91 Fed. Rep., 519) and *G. A.* 4900 (*T. D.* 22934) cited and followed; *G. A.* 5090 (*T. D.* 23558) distinguished.—*T. D.* 24765 (*G. A.* 5464).

Additional Duties.—Imported articles conditionally free are not liable to the provisions of section 32, act of 1897, for undervaluation, if the conditions are complied with.—*Dept. Order (T. D.* 24658).

Appraised Value of Merchandise Seized for Undervaluation.—The appraised value of merchandise seized for violation of section 7, as amended by section 32, act of 1897, is the foreign dutiable value provided for in section 10, act of June 10, 1890, in addition to which is to be exacted and treated as duty

the regular duty and 50 per cent additional duty prescribed by section 7 as amended, as a condition precedent to the release of the merchandise on payment of the appraised value under section 3081, Revised Statutes. Section 13, act of June 10, 1890, and not section 3074, Revised Statutes, prescribes the proper method of appraisement of merchandise seized for violation of section 7 as amended by section 32, act of 1897.—Dept. Order (T. D. 23726).

Clerical Error Noticed Before Entry.—The power to correct clerical errors in invoices and entries, vested by law in the Secretary of the Treasury and in the board of classification, operates as an exception to section 7, act of June 10, 1890, which forbids an assessment of duty on an amount less than the invoice or entered value.

Where an importer perceives an error in his consular invoice before entry, and offers to enter on a pro forma invoice pending the receipt of a corrected consular invoice, which offer is rejected by the collector, who compels the importer to make entry on the erroneous invoice, such refusal of the collector does not defeat the importer's right to have the error corrected by the board of classification upon satisfactory proof that it is a clerical error.—T. D. 23519 (G. A. 5077).

Exposition Exhibits.—Articles imported under the act approved March 3, 1899, for exhibition at Buffalo, and transferred for exhibition at New York under paragraph 702, act of 1897, are not merchandise and are not subject to duty or to the provisions of section 32, act of 1897, amending section 7, act June 10, 1890, until the importer, within or at the end of the period allowed by law, has elected not to export them. Examination and appraisal are to be made at the place of final exhibition.—Dept. Order (T. D. 23429).

Refund of Additional Duty.—The Secretary of the Treasury may, under section 24, act of June 10, 1890, refund additional duties accruing under section 32, act of July 24, 1897, by reason of manifest clerical error, at any time within one year of the date of entry.—Dept. Order (T. D. 22990).

Nondutiable Items—Clerical Error.—The mere report of an appraising officer that the invoice value of imported merchandise includes certain nondutiable items is not of itself sufficient to establish a claim that a clerical error was committed in the preparation of the invoice.

Where an invoice contains no specification of costs and charges, and the importers make entry at the value named in the invoice, without seeking to make any deduction therefrom, it is proper for the collector to assess duty on such entered value, even though the appraiser has reported that it includes nondutiable items. *Vantine v. U. S.* (91 Fed. Rep., 519) followed.—T. D. 22934 (G. A. 4900).

Assessment of Duty on Invoice or Entered Values.—Whenever imported goods of any description, not expressly exempted from duty by law, are given a value in the invoice or entry, and are returned by the appraiser as of "no commercial value," duty must nevertheless be assessed upon an amount not less than the invoice or entered value.—Dept. Order (T. D. 22921).

Additional Duty on Wire Rope.—Wire rope is dutiable either by specific or ad valorem rate, according to its value, and it is essential that that value be ascertained in order that the rate may be adjusted. Reappraisement is legal in such case, and the penalty for undervaluation properly imposed under section 7 of the administrative act. *Hoeninghaus v. U. S.* (172 U. S., 622) cited and followed.—T. D. 22504 (G. A. 4770).

Estimated and Additional Duty.—Estimated duty not to be refunded when imported goods are forfeited. Additional duties accrue and should be assessed,

whether forfeiture prevails or not, unless due to manifest clerical error.—Dept. Order (T. D. 22218).

Additional Duty.—Forfeiture under section 32, act of July 24, 1897, of imported merchandise does not relieve the importer from payment of increased regular duty and 50 per cent additional duty.—Dept. Order (T. D. 22169).

Additional duty is a duty and not a fine or penalty. When it exceeds 50 per cent, seizure follows, and if forfeiture fails, 50 per cent additional duty is to be exacted. Additional duty of 50 per cent must be taken when property seized for undervaluation is bailed under section 938, Revised Statutes.—Dept. Order (T. D. 22146).

Consigned and Purchased Goods.

ADDITIONS ON ENTRY TO MAKE MARKET VALUE.—Section 7 of the customs administrative act, as amended by section 32 of the tariff act of 1897, authorizes additions on entry to invoice values of imported merchandise so as to raise the same to market values only where such merchandise has been "actually purchased," as distinguished from that "obtained otherwise than by actual purchase."

The purchase contemplated by the statute is a purchase made by an owner or consignee in the United States from a consignor in some foreign country, and has no reference to transactions of bargain and sale exclusively conducted between aliens or other persons resident abroad.

Goods purchased abroad by one member of a partnership, resident in Liverpool, and consigned to another member of the partnership, resident in New Orleans, La., for sale on joint account of the firm, are consigned goods "obtained otherwise than by purchase," and are not entitled to the benefit of the provisions accorded by said section 7 only to goods "actually purchased."—T. D. 21592 (G. A. 4552).

Invoice Value is Unit Price.—Duties should be assessed only on the quantity of merchandise actually imported, and not on the quantity appearing by the invoice to have been shipped. The last clause of section 32, tariff act of 1897, forbidding the assessment of duties on an amount less than the invoice value, refers only to the price and not to the quantity of the imported merchandise.—T. D. 21525 (G. A. 4529).

Entry at Less than Invoice Value.—The collector of the port may refuse to permit an importer to enter his goods at a lower price than that disclosed in his invoice at which they were purchased, even though the consular notation shows such lower price to be the actual market price on day of shipment. Section 8, act of 1890, requires statement in detail of purchase price and section 8 of said act does not permit assessment on a lower price. Consular notation is not conclusive. The purpose of the law is to secure information and guard against wrongdoing only.—T. D. 21199 (G. A. 4447).

Specific Duties Regulated by Value.—Merchandise dutiable at specific rates under paragraph 387 of the tariff act of 1897, which contains a provision that none of such goods shall pay a less rate than 50 per cent ad valorem, is "merchandise subject to a duty based upon or regulated by the value thereof," within the meaning of section 32 of said act, amending section 7 of the customs administrative act of June 10, 1890, and is therefore subject to the additional duty imposed by said section when appraised at a value exceeding that declared in the entry. *Hoeninghaus v. U. S.* (19 Sup. Ct. Rep., 305), affirming a decision *In re Hoeninghaus*, T. D. 18746 (G. A. 4059) of the board, followed.—T. D. 20847 (G. A. 4383).

Clerical Error in Entry.—Addition on invoice not noted on entry is manifest clerical error. Judicial affirmance of G. A. 2624.—T. D. 20730 (G. A. 4362).

Appraised Value of Seized Goods.—Where duty involved in seizure cases under section 32 of act of July 24, 1897, is less than \$25, collectors are authorized, if no fraud is apparent, to release on payment of appraised value, viz., foreign value with duty added.—Dept. Order (T. D. 18790).

Duress.—Invoicing goods in accordance with a previous value established by the Board of General Appraisers is not invoicing under duress.—T. D. 18082 (G. A. 3884).

Nondutiable Items Not Part of Entered Value.—A nondutiable item, specified in an invoice, can not be included in entered value of consigned goods, so as to evade penal duty under section 7, act of June 10, 1890.—T. D. 17949 (G. A. 3824).

Additional Duty on Goods Paying Specific Rates.—Where goods dutiable under the countable clauses are advanced in value by the appraisers in excess of 10 per cent of the value declared in the entry, they are subject to the additional duty provided for in the customs administrative act.

Where bottles dutiable under paragraphs 103 and 104, act of 1890, are advanced in value more than 10 per cent over the value as given in the invoice, they are subject to the additional duty.—T. D. 17154 (G. A. 3471) ; T. D. 13780 (G. A. 1974) reversed.

Clerical Error in Invoice.—Protest against the exaction of additional duties on two cases of Chinese envelopes, invoiced at \$3.40 instead of at \$34, through an alleged clerical error, sustained.—T. D. 15832 (G. A. 2932).

Clerical Errors in Entry.—The omission from the entry of an amount stated in a memorandum attached to the invoice held to be a manifest clerical error.—T. D. 15071 (G. A. 2624).

Invoice Value is Unit Price.—Wool invoiced as 9,892 pounds, at 6½d. per pound, the total value on the entry being \$1,254. The appraiser advanced the price to 7½d., the weight returned was 9,725 pounds and the total value \$1,479. The appraised value per pound having exceeded the entered value by 20 per cent an additional duty of 40 per cent was assessed. The importer claimed that the advance should not be considered per pound, but estimated at the difference between the total entered and advanced value. *Held*, that the article advanced was the wool per pound and that the additional duty was properly assessed.—T. D. 14858 (G. A. 2541).

Penalty on Consigned Goods.—Goods purchased by Passavant, of Paris, from G., of Paris, and consigned to H., of New York, for sale on account of Passavant, are goods obtained otherwise than by actual purchase and addition can not be made on entry to the invoice value.—T. D. 14806 (G. A. 2489).

Duress—Additions to Entry Under (Carbons).—Carbons imported and pending reappraisement on previous similar importations the importer added to the entry to make value found on the first reappraisement. The board having sustained the invoice value in the first instance the importer claims that the addition in this case was made under compulsion. Protest overruled.—T. D. 14748 (G. A. 2470).

Additional Duty Under Section 7 Does Not Apply Severally to the Component Materials of an Imported Article.—The value of steel wire entering into steel-wire rope (dutiable under paragraph 148 (act of 1890) was declared in pro forma invoice to be £11 7s. and the completed rope £23 12s. Values advanced on appraisement and reappraisement to £12 17s. 11d. for the wire and £24 18s. 4d. for the rope. The advance value of the steel wire exceeding the invoice value by more than 10 per cent, additional duty was exacted. The

appraised value of the rope did not exceed the invoice value by 10 per cent. *Held*, that the additional duty did not accrue.—T. D. 14626 (G. A. 2384).

Duress.—Additions to entered value of the cost of transportation from Nottingham to Liverpool held to have been made under duress.—T. D. 14555 (G. A. 2347).

Transportation charges from Dundee to Glasgow added because the collector refused to permit the importer to deduct such transportation. *Held*, that the consignee by reason of duress is not bound by the entered value.—T. D. 14554 (G. A. 2346).

Additional Duties Do Not Accrue on Account of Difference in Value of Currency.—Goods bought and paid for in Austria in francs and invoiced in that currency. The equivalent of the value in francs was stated on the invoice to be 356.46 florins of the value of 41.67 cents each, the value of the paper florin in actual use in Austria. The consul certified the value with the charges to be 356.46 florins. The importer offered to enter the merchandise in francs but was required to make entry in florins, and he entered at 356.46 less 11.46, the amount of the charges. The appraiser returned "add to make market value the difference in currency 47.59 florins." On reappraisal the value was found to be 739.25 francs and the collector liquidated the entry at that sum, making \$143, and the entered value of 345 florins net he found to be \$125, and assessed the additional penalty. *Held*, that additional duties do not accrue on account of difference in value of currency.—T. D. 14239 (G. A. 2203).

Protest Against Reappraisements.—All decisions of the board as to market value are final and conclusive as to dutiable value where there is no fraud or irregularity, and the additional or penal duty is a mere incident which necessarily follows the finding of value in excess of the entered value to the extent provided by law.—T. D. 14046 (G. A. 2097).

Purchased Goods—Addition on Entry.—Additions to entry upon merchandise purchased abroad made by the consignees and agents to avoid additional duty and penalty not authorized.—T. D. 13499 (G. A. 1801).

Clerical Error on Entry.—Failure to add invoice charges on entry, whether intentional or not, is not a manifest clerical error.—T. D. 13508 (G. A. 1810).

The deduction of nondutiable charges from the net amount of the invoice instead of the gross amount held to be a manifest clerical error.—T. D. 13065 (G. A. 1570).

Entry gave value of cherry juice as 496.99 marks and casks as 207.22 marks. The invoice value of the casks was 791.51 marks, which was returned as correct by the appraiser. Entry corrected and the duties on increased value promptly paid (Oct. 6, 1890). In accordance with instructions from the department the collector, on June 11, 1891, reliquidated the entry and additional duty or penalty was exacted. The protest claimed that the entry for the casks was a clerical error and that the original liquidation was final. *Held*, that while the value of the casks as given in the entry was an error there was nothing on the face of the entry to denote that such was the case, and that the additional duty was a debt to the Government which could not be remitted by the collector either directly or indirectly.—T. D. 12689 (G. A. 1338).

Undervaluation.—Tissue paper invoiced and entered at 3s. 10d. per ream, to which the appraiser added 7d. to make market value. Three days after entry the importer, the owner and purchaser, asked to make correction, claiming that the shipper had, through error, invoiced the paper 7d. per ream too low. *Held*, not to be a manifest clerical error.—T. D. 12524 (G. A. 1208).

Consigned Goods—Addition on Entry.—Invoice value of consigned goods can not be advanced on entry.—T. D. 13062 (G. A. 1567).

Importers made entry of "olive oil, 880 francs, and bottles, 30 francs." Value of bottles increased to 94 francs and additional duty assessed. *Held*, that there is no evidence that there was a manifest clerical error in invoicing the bottles.—T. D. 12226 (G. A. 1040).

The inclusion of nondutiable items (commissions) on consigned goods would be an addition to entered value and such additions can not be made.

The collector deducted the commissions on consigned goods which increased the additional duty under section 7. The protest claims that this commission was manufacturers' profit and should not have been deducted. Protest overruled.—T. D. 12461 (G. A. 1199).

Immediate-Transportation Entry is Not the Entry of Merchandise.—*Held*, that an entry for immediate transportation to an interior port and a pro forma invoice for that purpose is not the entry nor pro forma invoice contemplated by section 7, act of June 10, 1890.—T. D. 12106 (G. A. 968).

Additional Duty on Part of an Invoice of Silk Handkerchiefs.—*Held*, that in this case handkerchiefs of a special number, size, and weight, invoiced in one item distinct from others, were undervalued and the penal duty attached to the particular articles embraced in the item.—T. D. 11999 (G. A. 912).

Duress—St. Gall Embroideries.—The importer added 10 per cent to the cost price of St. Gall embroideries and made this statement in the invoice: "Added under protest 10 per cent, as required by the Treasury Department." He then claimed that this amount was added under duress. *Held*, that duty could not be assessed upon an amount less than that stated in the invoice.—T. D. 10763 (G. A. 316); T. D. 11887 (G. A. 878).

Exact Per Centum of Advance Determines Whether Additional Duty Applies.—An advance of a fraction more than 10 per cent is an advance of more than 10 per cent.—T. D. 11841 (G. A. 832).

Additional Duty—Date of Consular Invoice.—The date of consular invoice does not affect the imposition of additional duty. (Invoice dated prior to Aug. 1, 1890.)—T. D. 10550 (G. A. 200).

Additional Duty—Pro Forma Invoices.—The additional duty attaches on pro forma invoices.—T. D. 10548 (G. A. 198).

Additional Duty—Advice of American Consul.—Protest that the additional duty (fixed by the appraiser and on reappraisement by a general appraiser and by the Board of General Appraisers) is "unjust, as the invoice presented by me was made by the manufacturers of said lime, under instructions of the American consul, and presented the true value and charges on said lime," overruled. If the invoice was made out at the true value of the merchandise, under instructions from the consul, there could be apparently no ground for complaint of duress on the part of the Government officers. The importer exhausted his remedies in appealing to the tribunal of last resort against the valuation and the additional duty exacted in accordance with law must stand.—T. D. 10547 (G. A. 197).

Additions to Invoice Value Can Not be Made After Entry.—Goods entered without additions to invoice. By the next mail the importer received a letter from the shipper stating that the books entered at 21d. should have invoiced at 2s. The importer communicated this information to the appraiser who made the addition to the invoice, which raised the value more than 10 per cent, and the penalty was imposed. *Held*, that additions to invoice value can not be made by the importer after entry.—T. D. 10532 (G. A. 182).

Clerical Error in Invoice.—An error admitting of rectification must be manifest upon the face of the papers.—T. D. 10238 (G. A. 16).

Merchandise Paying a Specific Duty.—When the question whether goods are to pay a specific or an ad valorem duty depends on whether they exceed a certain value (as in the case of gloves under paragraph 458, act of 1890), an appraisement is essential, and if the appraisement discloses that the goods have been undervalued more than 10 per cent they are subject to the penalty of an increased duty, although the excess of over 10 per cent on the invoiced value is not sufficient to require an ad valorem instead of a specific duty. T. D. 13780 (G. A. 1974) reversed.—*Pings v. U. S. (C. C. A.)*, 72 Fed. Rep., 260.

Additional duties are incurred under this section where goods paying a specific rate of duty varying with their value are appraised at a value in excess of that at which they are entered, notwithstanding that the advance made on appraisement did not result in altering their dutiable classification so as to subject them to any higher rate than that at which they were entered.—*U. S. v. Nuckolls*, 118 Fed. Rep., 1004.

Additional Duties Are Penal.—The provision in this section imposing additional duties when the appraised value exceeds the entered value is penal in its nature, and the additional duties are a penalty. The district court has exclusive jurisdiction of a suit brought by the United States to recover such additional duties, and the circuit court has no jurisdiction of such suit.—*Helwig v. U. S.*, 188 U. S., 605.

Addition Noted on Invoice, Omitted from Entry.—An addition made by the importer to the invoice value, though marked upon the invoice itself, becomes a part of the entered value, and the collector can not ignore such addition and then assess a penal duty which would not otherwise have accrued.—*U. S. v. Merck & Co. (C. C.)*, 91 Fed. Rep., 641.

Undervaluation—Forfeiture.—The additional duties are payable, except in cases of clerical error, irrespective of any question of fraudulent undervaluation on the part of the importer, but the merchandise is not forfeited except in cases of fraudulent undervaluation.—*U. S. v. 1,621 Pounds of Fur Clippings (C. C. A.)*, 106 Fed. Rep., 161.

Charges Added by United States Consul.—The unauthorized act of a United States consul in adding to the invoice value of goods the amount of ocean freights is not conclusive upon the importer, and he is entitled to have the valuation corrected even though the appraiser has, in a pro forma manner, approved the invoice by marking it "correct."—*U. S. v. Zuricaldy (C. C.)*, 71 Fed. Rep., 955.

Forfeiture—All Duties Accrue.—When goods are found to be undervalued over 50 per cent the institution and prosecution of proceedings for forfeiture do not relieve the importer from liability for the additional duty of 1 per cent of the total appraised value for each 1 per cent that the appraised value exceeds the entered value.—*Gray v. U. S.*, 113 Fed. Rep., 213.

Appraised value exceeded invoice value by more than 50 per cent. *Held*, that the fact that a case is within the terms of the proviso to this section or that the Government has proceeded thereunder for the forfeiture of the goods does not relieve the importer from liability for the additional duty imposed by the previous portion of the section.—*U. S. v. Gray*; *Same v. Sherman*; *Same v. Baldwin (C. C.)*, 107 Fed. Rep., 104.

Intentional Omission from Entry.—One who is assessed with a penalty for entering dutiable goods at a sum below their actual value can not, in an action for the penalty, defend on the ground that he intentionally omitted cer-

tain items from the entry in order to pay them separately under protest. He must either give notice and ask for a reappraisal or take an appeal as provided by law.—*U. S. v. Strauss* (C. C.), 55 Fed. Rep., 388.

Sugar Invoiced at a Price Based on Polariscopic Test.—An importation of sugar was invoiced as "basis 81 degrees" with a memorandum attached stating "purchased at 1½ cents per Sp. lb. net, basis 81 degrees, average, 1.32 cents per pound to be added for each degree above 81 degrees test, or 1.16 cents per pound to be deducted for each degree below 80 degrees test; fractional of a degree pro rata." This meant that the price was to vary according to the quality as shown by the polariscopic test. Upon appraisal the value of the sugar was found to be more than 10 per cent above the price of 1½ cents per pound, but much less than that above the price as fixed by the test according to the memorandum. *Held*, that this was not an undervaluation of more than 10 per cent, which would justify the imposition of the additional duty.—*U. S. v. American Sugar Refining Co.* (C. C.), 71 Fed. Rep., 951.

Disallowing Commission to Make Market Value.—In appraising certain dress goods, the appraiser made an addition to the entered value of the invoice by disallowing a commission of 2.5 per cent claimed as a discount for cash. This was done, as the appraiser said, "to make market value," the discount being considered as excessive. The importer protested. *Held*, that it must be assumed that the discount was not arbitrarily rejected, but that the same was taken as the measure of the advance, which the appraiser deemed it his duty to make in ascertaining market value, and that, therefore, the remedy of the importer was not by protest but by an appeal for reappraisal.—*Wanamaker v. Cooper* (C. C.), 69 Fed. Rep., 329.

DECISIONS UNDER EARLIER STATUTES PERTAINING TO SAME SUBJECT MATTER.

Additions by Importer.—Under this section an importer has a right to make in his entry an addition to the value as contained in his invoice; but the additional duty attaches, if the appraised value exceeds by 10 per cent the value in the entry, whether such addition has been made by the importer or not.—*Schmaire v. Maxwell*, 3 Blatch., 408; 21 Fed. Cas., 700.

Addition to Invoice Value.—On entry of merchandise actually purchased or procured otherwise than by purchase, the owner, consignee, or agent may make such addition in the entry to the cost or value given in the invoice as may, in his opinion, raise the same to the true market value of such imports in the principal markets of the country whence the importation is made and may add thereto all costs and charges which would form a part of the true value at the port where the same was entered. No duties can, however, be assessed upon an amount less than the entered or invoice value. *Harding v. Whitney*, 4 Cliff., 96; 11 Int. Rev. Rec., 103; 11 Fed. Cas., 496.

Additional Duty.—The penalty for undervaluation attaches whether the importer makes the addition to his invoice or not.—*Lehmaier v. Maxwell* (N. Y. Times, Jan. 28, 1856), 15 Fed. Cas., 250.

The additional duty is chargeable alike whether the importer avails himself of the privilege given by this section and adds to his invoice or whether an appraisal is made upon the invoice as originally made.—*Goddard v. Maxwell*, 3 Blatch., 131; 10 Fed. Cas., 510.

Appraised Value.—On an importation of woolen goods from Paris the appraisers took as a guide to their valuation the market price at the period of exportation, and on their report the value was raised 10 per cent and more

above the invoice value, and 50 per cent was added to the duties. *Held*, that the appraisers were required to appraise the goods at their value at the time of their purchase, and that the appraisal was void, and that the duties on the increase in valuation and the penalty were illegally exacted.—*Morlot v. Lawrence*, 3 Blatch., 122; 17 Fed. Cas., 772.

Appraisement.—Three lots of Japanese curios imported. Importer being dissatisfied with the appraisement called for merchant appraisers. The appraisers reported many of the items below the value given in the invoice and their appraisement, taken as a whole, did not increase the value 10 per cent above the entry value. The collectors disregarded all valuations by the merchant appraisers of items on the invoice where made lower than the entry. Upon this basis the value was more than 10 per cent above the entered value and a penalty of 20 per cent was added. *Held*, that the collector erred in assuming that the importer was estopped from going below his own entered value on any single item in the invoice and the duties should have been assessed on the invoice as a whole, as appraised and valued by the merchant appraisers, and that the additional duty was erroneously assessed.—*Yanada v. Spalding*, 24 Fed. Rep., 21.

Appraisement Without Valuation.—The act of March 3, 1851, section 1 (9 Stat., 629), only varies the provisions of the act of 1846 so far as concerns the period of time with reference to which the valuation of imported merchandise is to be made, and does not affect the question of the imposition of extra duties because of undervaluation.

Where, under such circumstances, the appraisers, without any valuation of the goods, added to the first invoice exactly the difference between the two invoices, and a penalty of 20 per cent for undervaluation (under act of July 30, 1846, sec. 8) was imposed because such difference exceeded 10 per cent, held that under sections 16 and 17, act of 1842, an actual appraisal of purchased goods as of the time of purchase must be made to authorize the imposition of a penalty of 20 per cent for undervaluation.—*Morris v. Maxwell*, 3 Blatch., 143; 17 Fed. Cas., 824.

Charges for Freight Not Part of Appraised Value.—A cargo of goods was shipped from Canton to London and thence to New York. The freight from Canton to London was added as a part of the dutiable value. *Held*, (1) that this charge was not authorized; (2) that even if this freight were a proper charge it would form no part of the "appraised value" of the goods and its addition would not authorize the imposition of the 20 per cent penalty under the act of 1846.—*Grinnell v. Lawrence*, 1 Blatch., 346; 19 Hunt. Mer. Mag., 533; 11 Fed. Cas., 54.

Lemons taken on board at San Remo, and the freight on them from San Remo to Genoa was added to the dutiable charges, increasing the invoice value by more than 10 per cent, in consequence of which additional duties of 20 per cent were imposed. The addition of the freight between San Remo and Genoa was, under the circumstances of this case, illegal.

The imposition of the additional duty in consequence of the addition of the freight and the increase of the commissions was illegal.

Freight and commissions, although dutiable items in proper cases, are not the subject of penal duties in themselves, nor by being added to the value of the imports can they be the means of imposing a penalty on the latter.

A collector has authority, upon an appraisement, to assess the additional duty for undervaluation of purchased goods which is prescribed in this section, although the importer has made no addition in the entry to the invoice value of the goods.—*Vaccari v. Maxwell*, 3 Blatch., 368; 28 Fed. Cas., 862.

When additional duty is levied for a false entry it is upon the value of the goods alone and not upon their value with charges and commissions added.—*Sampson v. Peaslee*, 20 How., 571, 575.

Corrected Invoice Presented Before Appraisement.—Where an invoice of goods not purchased in a foreign market, but belonging to their producer, was entered at the customhouse by their consignee, and before any action was taken to determine the value of the goods a corrected invoice was given to the collector by the consignee, held that it was the duty of the collector to take the value of the goods in the corrected invoice as the entry valuation, and that it was illegal for him to impose a penalty for undervaluation because of the difference between the two invoices.—*Howland v. Maxwell*, 3 Blatch., 146; 12 Fed. Cas., 742.

Where, on an entry of goods by their consignee, he presented as a true invoice one sent to him by their owner and swore to it, and the collector directed the appraisers to value the goods as of the time of their shipment, and the consignee, before the appraisement was made, applied to the collector to amend the entry by adding to the price set down in it an amount sufficient to raise the goods to their fair market value abroad "in order to avoid the penalty," which was refused, held that it was lawful for the collector to so refuse and to impose duties on the value ascertained by the appraisers and a consequent penalty for undervaluation.

Where it is not shown either by the invoice, the entry, or the protest that the goods imported were purchased it is lawful for the collector to have them appraised at their value abroad at the time of their shipment and to collect duties on such value, and to impose any consequent penalty for undervaluation, although, in fact, the goods were purchased at the price in the entry and such price was their fair market value abroad at the time of their purchase.—*Harri-man v. Maxwell*, 3 Blatch., 421; 11 Fed. Cas., 603.

Where the consignee of a quantity of corks (in 1856) imported from France presented on their entry an invoice and entry, both of which were erroneous through mistake and not through fraud, and immediately discovered the error and notified the collector of it and sent to France for a corrected invoice, delivered it to the collector, and requested permission to correct the error, which was refused, and the collector imposed duties on the value as stated in the true invoice and a penalty for undervaluation, without any appraisal of the goods, *Held*, that the penalty was illegally exacted.—*Carnes v. Maxwell*, 3 Blatch., 420; 5 Fed. Cas., 90.

Currency.—Where an invoice sets forth the prices of goods in a foreign paper currency and also carries them out reduced to a specie standard and the importer makes the entry in the specie value and, on appraisement, the value is returned at the invoice paper currency prices, which is greater by 10 per cent than the specie value; it seems that this is not such an excess of appraised value over the value declared in the entry as to warrant the importation of a penalty of 20 per cent for undervaluation.—*Fiedler v. Maxwell*, 2 Blatch., 552; 8 Fed. Cas., 1194.

Duress.—The importer added 18 per cent to the market value as stated in the invoice, with a protest stating that he made the addition to prevent a seizure and that the real value was the original invoice value. On like merchandise entered before by the importer 18 per cent had, on appraisal, been added to the invoice value and the goods had been seized for forfeiture. In a suit to recover the duties paid on the 18 per cent, *Held*, that the action could not be maintained. After the addition of the 18 per cent the value of the goods

for duty could not be fixed by appraisal at a less sum than that arrived at by such addition.—*Haas v. Arthur*, 14 Blatch., 346; 11 Fed. Cas., 139.

When charges are added under protest, and by reason of the refusal of the entry clerk to receive the entry unless such additions are made, and for the purpose of obtaining possession of the goods, the additions so made are not voluntary, so as to preclude recovery. The exactions being compulsory the collector can not insist that the appraisal was conclusive. The act of the entry clerk in compelling the addition to the entry was official, notwithstanding that the collector gave no instructions to him other than to make entries according to law and the Treasury regulations.—*Benkard v. Schell*, 3 Fed. Cas. 192.

If an importer on being refused permission to enter his goods at their value at the time of procurement and to avoid the penal duty provided by section 8, act of July 30, 1846 (9 Stat., 43), thereupon adds to the valuation in his invoice under protest and pays the duty assessed thereon, he may maintain an action to recover back the difference between the duty leviable by law on the original and the increased valuation.

It can hardly be meant that in this class of cases to make a payment involuntary it should be by actual violence or any physical duress. It suffices if the payment is caused on the one part by an illegal demand and made on the other part reluctantly and in consequence of that illegality and without being able to regain possession of his property except by submitting to the payment.—*Maxwell v. Griswold*, 10 How., 242, 256.

Where the importer claimed that certain goods should be appraised at their value abroad at the time of their purchase, and the collector directed them to be appraised at their value at the time of their exportation, they having risen in value in the meantime, and the importer, for the purpose of obtaining possession of the goods and of avoiding the penalty imposed by section 8, act of July 30, 1846, for an excess of 10 per cent in the appraised value over the value in the entry, added to the cost of the goods a sum which made their value equal to their value abroad at the time of their exportation, and paid duties on that value under protest, *Held* that the payment of the duties was not voluntary.

Where goods are imported from the country of their production, they must, for the purpose of fixing their dutiable value, be appraised at their market value in that country at the time of their purchase.—*Griswold v. Lawrence*, 1 Blatchf., 599; 11 Fed. Cas., 66.

Excess Over Invoice Quantity.—Where the valuation of molasses in casks, in an invoice, is correct, but the quantity stated in the invoice is less than the actual quantity found on gauging, the case is not one for the imposition of a penalty for undervaluation.

Where an invoice of molasses in casks does not specify the number of gallons, the case is one of undervaluation and the penalty may properly be imposed.—*Yznaga v. Redfield*, 4 Blatchf., 469; 17 Leg. Int., 357; 30 Fed. Cas., 903.

Coal was invoiced and entered at a certain weight and price per ton. On appraisal the price per ton was reported to be correct, but the quantity was reported as so much greater as to make the entire valuation greater by 10 per cent than the entry valuation. The collector exacted a penalty of 20 per cent. *Held*, that this was illegal.—*Manhattan Gas Light Co. v. Maxwell*, 2 Blatchf., 405; 16 Fed. Cas., 600.

Fraud on Importer—Goods Invoiced at Higher Value.—Where a fraud was committed on an importer of cigars by the manufacturer by invoicing them erroneously as to their grades, and the duties were deposited on the valuation

in the invoice, and the appraisers decided that a fraud had been committed and that the invoice should be reduced, but the collector refused to permit the reduction, because the Secretary would not authorize it, and exacted duties on the invoice value, and the entries were liquidated under a protest setting forth the error in grades, *Held*, that the collector ought to have allowed the error to be corrected and that the protest was sufficient and made in time.

Semble, that the proviso which concludes this section is not repealed by the act of 1851, and that it applies to entries made without any increase in the valuation given in the invoice as well as to those in which an addition has been made to the invoice.—*Lillie v. Redfield*, 4 Blatchf., 41; 15 Fed. Cas., 538.

Forfeiture—Additional Duty.—After imported goods have been seized by a collector as having been invoiced and entered below their value to defraud the revenue, and have been libeled for forfeiture and discharged on trial, the collector may still impose the additional duty.

If such additional duty is paid it can not be recovered back, unless a proper protest is made at the time of payment.—*Falleck v. Barney*, 5 Blatchf., 38; 8 Fed. Cas., 974.

Upon seizure of goods as forfeited and information filed no penal increase of duties can be exacted by the collector, though such a penalty might have been imposed before the goods were seized as forfeited. If such a penal increase has been received by the collector before the seizure, the goods, though they would otherwise have been liable to forfeiture, are exempt from such liability. The exaction of such an increase after information filed through an illegal act does not affect the prosecution.—*U. S. v. Segars* (16 Leg. Int., 388; 3 Phila., 517), 27 Fed. Cas., 1015.

Forfeiture—Bond for Exportation.—Goods seized (1876) as forfeited for undervaluation. Appraised value exceeded entered value by more than 10 per cent and the goods thereby became liable to 20 per cent additional duty. They were proceeded against and taken into custody by the marshal. Under proceedings for a remission of the forfeiture the Secretary remitted it on condition that the importer should pay the cost and the duties on the goods if they were due or give bond to export the goods. He elected to give bond, but the collector refused to permit the goods to be delivered until the importer had paid the 20 per cent additional duty. He paid and brought suit to recover. *Held*, that the exaction was illegal and the plaintiff was entitled to recover.—*Murray v. Arthur*, 13 Blatchf., 429; 22 Int. Rev. Rec., 257; 17 Fed. Cas., 1045.

Minimum Value.—The proviso in section 7, act of March 3, 1865 (13 Stat., 491, 494), that the duty shall not be assessed upon an amount less than the invoice or entered value, and the like proviso in section 9, act of July 28, 1864 (14 Stat., 328, 330), are applicable to the valuation of wools for the purpose of determining the rate of duty chargeable upon them under the act of March 2, 1867 (14 Stat., 559), and June 6, 1872 (17 Stat., 230).—*Saxonville Mills v. Russell*, 116 U. S., 13.

The collector is right in assessing the invoice price of imported goods as the minimum valuation on which duties shall be assessed.

The statement in an invoice of goods that 2½ per cent will be deducted for cash payment will not authorize a corresponding deduction in the valuation on which duties shall be assessed.—*Ballard v. Thomas*, 19 How., 382.

Moiety of Additional Duties.—Additional duties are not distributable to any officers of the customs.

Though the act of February 11, 1843 (9 Stat., 3), applies in terms only to the additional duties levied under the act of 1842, yet those levied under this

section are only substitutes therefor in certain cases and to be governed by the same rules as to distribution.—*Ring v. Maxwell*, 17 How., 147.

The additional duties of 20 per cent are not fines and penalties, and the collector is not entitled to a moiety of them.—*Collier v. U. S.*, 3 Blatchf., 325; 25 Fed. Cas., 527.

Produce of Spain Invoiced From London.—When an invoice of quicksilver from London (1846) did not show that the article was the produce of Spain and its invoice value was raised by appraisal to its true value in the London market and the collector imposed duty on the additional valuation and a penalty for the undervaluation and the importer had not proved or offered to prove, before the appraisers or the collector, that the quicksilver was the produce of Spain. *Held*, that the additional duties and the penalty were properly imposed and collected, although the quicksilver was in fact the produce of Spain.—*Belmont v. Lawrence*, 3 Blatchf., 119; 3 Fed. Cas., 150.

Rewarehoused Goods—Appraisement at First Port.—Where goods are imported into a port of entry and warehoused there and are intended to be and are transported to another port, in bond for rewarehousing, the entry is to be completed at the former port, and the collector at the second port has no authority to levy the penal duty on such goods by virtue of a new appraisement made under his own direction.

Nor can the collector at the original port of entry make an addition to the invoice value upon mere hearsay information derived from the collector at the second port, and without notice to the importer, and after the goods have left the first port.—*Spring v. Russell*, 1 Lowell, 258; 8 Int. Rev. Rec., 193; 22 Fed. Cas., 989.

Trade Names of Articles.—Although articles may be dissimilar and known by different trade names, still, if they belong to the same class and are grouped together in the tariff acts as dutiable under their class names at the same rate and are valued in the entry at a lump sum for the entire importation, the penalty is not incurred unless the appraisement of the importation as a whole exceeds by 10 per cent or more the value declared in the entry.—*Morris v. Robertson*, 37 Fed. Rep., 199.

Undervaluations—Penalties for.—You are instructed in all cases in which it shall appear that the invoice or entered value of an importation of merchandise is materially less than the true value estimated in the manner provided by law, and you shall be satisfied that such undervaluation was made with intent to avoid the payment of proper duties on the merchandise, to report them immediately to the United States attorney, as prescribed by section 15 of the act of June 22, 1874, in order that, if in his opinion the proofs shall be sufficient, proceedings both civil and criminal may be taken under the various statutes above referred to for the forfeiture of the merchandise or its value and the punishment of the offender.—Dept. Order (T. D. 8304).

Undervaluation on Invoice of Several Similar Items.—If an invoice comprises several items of the same kind or description and one or more items are found to have been undervalued the penal duty will be imposed upon all the items of the same kind and description if the appraised value exceeds by 10 per cent the aggregate entered value of such items.

Ladies' dress goods do constitute items of the same kind within this rule where they differ so much in price, figures, and arrangement of colors as to be classified and known to the trade by different names.

The valuation of such importations should be made on the corrected invoice received and accepted by the collector before the appraisement of the goods.—*Schneider v. Barney*, 6 Fed. Rep., 150.

Undervalued Goods Imported by Manufacturer.—Where on an entry of goods the importer offered to write up the entry by adding thereto a sum which would make it equal to what the customhouse considered to be the market value of the goods, and the collector refused to permit such addition to be made because the importer and owner was the manufacturer of the goods and was not authorized by this section to add to his invoice and imposed a penal duty on the goods, on appraisement, for their undervaluation. *Held*, that the collector, having refused to allow the importer to add on his entry to the invoice price because he was the manufacturer of the goods, could not then impose a penal duty on the goods as having been purchased in a foreign market.

The act of 1842 does not subject a manufacturer to penal duties for undervaluation, and this section has the same restriction.—*Crowley v. Maxwell*, 3 Blatchf., 383; 6 Fed. Cas., 914.

Goods imported by their manufacturer are not subject to the additional duty of 20 per cent. This section relates only to goods which have been purchased in a foreign market and is not repealed or modified by section 1 of the act of 1851.

Such additional duty was not authorized by section 17, act of 1842, or section 13, act of 1823, for the like reason and also because the increased duty specified in each of those acts is 50 per cent and the collector can not exact a less or different one.—*Christ v. Maxwell*, 3 Blatchf., 129; 5 Fed. Cas., 652.

Where goods are, on appraisal, valued at more than 10 per cent above the invoice price, they are, nevertheless, not liable to an additional duty of 20 per cent if they were manufactured by the importer or were procured by him in the country of their production otherwise than by purchase.

Under section 16, act of 1842, and section 8, act of July 30, 1846, it is the duty of a collector to assess duties upon the appraised value of the goods imported by their manufacturer, notwithstanding there is an invoice sworn to by their owner. These sections are not confined to goods imported by a purchaser.—*Thomson v. Maxwell*, 2 Blatchf., 385; 23 Fed. Cas., 1100.

Section 17, act of 1842, authorizes the imposition of a penalty of 50 per cent for undervaluation of imported goods other than those purchased, which latter are provided for by section 8, act of July 30, 1846 (9 Stat., 43), which imposes a penalty of 20 per cent on their appraised value.—*Bannendahl v. Redfield*, 4 Blatchf., 223; 2 Fed. Cas., 763.

Where the invoice valuation of goods imported by the manufacturer is increased more than 10 per cent the collector can not impose the penalty of 20 per cent.—*Durand v. Lawrence*, 2 Blatchf., 396; 8 Fed. Cas., 113.

Where goods are imported by their manufacturer they are not subject to an additional duty or penalty of 20 per cent for undervaluation in the invoice, but are subject to a penalty of 50 per cent under the act of 1842.—*Bischoff v. Maxwell*, 4 Blatchf., 384; 3 Fed. Cas., 451.

The rule of the appraisement of goods imported by manufacturers prescribed by the acts of March 1, 1823 (7 Stat., 729), and the act of July 14, 1832 (4 Stat., 583), is applicable to this case notwithstanding the act of 1842.

But section 17, act of 1842, which prescribes a penalty of 50 per cent of the value so appraised where the value so properly ascertained exceeds by 10 per cent the invoice value, is also applicable, because the subsequent act of 1846, which reduces this penalty to 20 per cent where goods were purchased abroad,

does not change the penalty as to goods imported by manufacturers.—*Belcher v. Lawrason*, 21 How., 251.

Value Based on Weight.—Soap having been entered at the customhouse at a valuation based upon its net weight, after deducting the actual weight of the boxes, the customhouse valuation, upon an allowance of only 10 per cent on the gross weight, as tare, having exceeded the invoice valuation by more than 10 per cent and the collector having imposed an additional duty of 20 per cent upon the customhouse valuation, claiming that such penalty was authorized in consequence of such excessive valuation. *Held*, that the penalty was illegally exacted.

The weight of the boxes, cases, or packages in which goods are imported is not the subject of appraisement within the meaning of this section.—*Wilson v. Maxwell*, 2 Blatch., 316; 30 Fed. Cas., 147.

Purchase Price Greater than Market Value.—Wool bought at Cape Town for 10d. per pound. Held for several months and shipped when wool was worth 8½ cents per pound. Importers contended that it should be free. Under the act of March 3, 1857 (11 Stat., 192), which act allows an importer to make additions to the value of goods as given in the entry or invoice and which provides "that under no circumstances shall the duty be assessed upon an amount less than the invoice or entered value, any law of Congress to the contrary notwithstanding," and the act of the same day (*id.*, 199), which enacts that "manufactured sheep's wool above the value of 20 cents shall pay an ad valorem duty of 24 per cent, but if of the value of 20 cents or less at the place of exportation, shall be exempt from duty," the invoice and entered value (which in this case was the actual cost) and not any lower market value of the goods at the place and date of exportation is the value upon which duty is to be assessed.—*Kimball v. The Collector*, 10 Wall., 436.

J. That when merchandise entered for customs duty has been consigned for sale by or on account of the manufacturer thereof, to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee shall, at the time of the entry of such merchandise, present to the collector of customs at the port where such entry is made, as a part of such entry, and in addition to the certified invoice or statement in the form of an invoice required by law, a statement signed by such manufacturer, declaring the cost of production of such merchandise, such cost to include all the elements of cost as stated in Paragraph L of this Act. When merchandise entered for customs duty has been consigned for sale by or on account of a person other than the manufacturer of such merchandise, to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee shall at the time of the entry of such merchandise present to the collector of customs at the port where such entry is made, as a part of such entry, a statement signed by the consignor thereof, declaring that the merchandise was actually purchased by him or for his account, and showing the time when, the place where, and from whom he purchased the merchandise, and in detail the price he paid for the same: *Provided*, That the statements required by this section shall be made in triplicate, and shall bear the attestation of the consular officer of the United States resident within the consular district wherein the merchandise was manufactured, if consigned by the manufacturer or for his account, or from whence it was imported when consigned by a person other than the manufacturer, one copy thereof to be delivered to the person making the statement, one copy to be transmitted with the triplicate invoice of the merchandise to the collector of the port in the United States to which the merchandise is consigned, and the remaining copy to be filed in the consulate.

SEC. 28.

Subsec. 8: That when merchandise entered for customs duty has been consigned for sale by or on account of the manufacturer thereof, to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee shall, at the time of the entry of such merchandise, present to the collector of customs at the port where such entry is made, as a part of such entry, and in addition to the certified invoice or statement in the form of an invoice required by law, a statement signed by such manufacturer, declaring the cost of production of such merchandise, such cost to include all the elements of cost as stated in section eleven of this Act. When merchandise entered for customs duty has been consigned for sale by or on account of a person other than the manufacturer of such merchandise, to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee shall at the time of the entry of such merchandise present to the collector of customs at the port where such entry is made, as a part of such entry, a statement signed by the consignor thereof, declaring that the merchandise was actually purchased by him or for his account, and showing the time when, the place where, and from whom he purchased the merchandise, and in detail the price he paid for the same: *Provided*, That the statements required by this section shall be made in triplicate, and shall bear the attestation of the consular officer of the United States resident within the consular district wherein the merchandise was manufactured, if consigned by the manufacturer or for his account, or from whence it was imported when consigned by a person other than the manufacturer, one copy thereof to be delivered to the person making the statement, one copy to be transmitted with the triplicate invoice of the merchandise to the collector of the port in the United States to which the merchandise is consigned, and the remaining copy to be filed in the consulate.

1909

SEC. 8. That when merchandise entered for customs duty has been consigned for sale by or on account of the manufacturer thereof, to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee shall, at the time of the entry of such merchandise, present to the collector of customs at the port where such entry is made, as a part of such entry, and in addition to the certified invoice or statement in the form of an invoice required by law, a statement signed by such manufacturer, declaring the cost of production of such merchandise, such cost to include all the elements of cost as stated in section eleven of this Act. When merchandise entered for customs duty has been consigned for sale by or on account of a person other than the manufacturer of such merchandise, to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee shall at the time of the entry of such merchandise present to the collector of customs at the port where such entry is made, as a part of such entry, a statement signed by the consignor thereof, declaring that the merchandise was actually purchased by him or for his account, and showing the time when, the place where, and from whom he purchased the merchandise, and in detail the price he paid for the same: *Provided*, That the statements required by this section shall be made in triplicate, and shall bear the attestation of the consular officer of the United States resident within the consular district wherein the merchandise was manufactured, if consigned by the manufacturer or for his account, or from whence it was imported when consigned by a person other than the manufacturer, one copy thereof to be delivered to the person making the statement, one copy to be transmitted with the triplicate invoice of the merchandise to the collector of the port in the United States to which the merchandise is consigned, and the remaining copy to be filed in the consulate.

1890

K. That it shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, or of the collector, as the case may be, by all reasonable ways and means in his or their power to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding) the actual market value and wholesale price of

1913

1913 the merchandise at the time of exportation to the United States, in the principal markets of the country whence the same has been imported, and the number of yards, parcels, or quantities, and actual market value or wholesale price of every of them, as the case may require.

SEC. 28.

1909 Subsec. 10: That it shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, or of the collector, as the case may be, by all reasonable ways and means in his or their power to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation to the United States, in the principal markets of the country whence the same has been imported, and the number of yards, parcels, or quantities, and actual market value or wholesale price of every of them, as the case may require.

1890 SEC. 10. That it shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, or of the collector, as the case may be, by all reasonable ways and means in his or their power to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation to the United States, in the principal markets of the country whence the same has been imported, and the number of yards, parcels, or quantities, and actual market value or wholesale price of every of them, as the case may require.

DECISIONS UNDER THE ACT OF 1913.

Market Value of Merchandise Purchased in Europe.—Invoices for merchandise purchased in Europe, which, owing to the European war conditions, has advanced in value, should be made up at about the time of exportation.—Dept. Order (T. D. 35713).

Freight Charges—Per Se Value.—It is the function of the appraiser to appraise the merchandise at its market value in the principal markets of the country from whence it is imported. All expenses incident to getting the merchandise to that point, therefore, become a part of the market value. A finding by the appraiser as to market value, the merchandise being consulated at Amsterdam, is equivalent to finding that that is one of the principal markets of the country of exportation. *Milbank, Leaman & Co.'s case*, G. A. 7506 (T. D. 33832) and *Grinnell v. Lawrence* (1 Blatch., 346; 11 Fed. Cases, 54, No. 5831).—T. D. 35596 (G. A. 7759).

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Legality of Appraisements.—The method prescribed in article 1266, Treasury Regulations, 1899, for calculating the market value of imported merchandise by appraisers is not mandatory, but only directory to appraising officers, and a failure to comply with its requirements does not vitiate or render illegal an appraisement.—T. D. 28572 (G. A. 6682).

Failure to Find Actual Value.—Where an appraiser makes no effort to ascertain the actual market value of merchandise as prescribed in section 10, customs administrative act of 1890, but merely accepts the value stated in the invoice as being high enough, he has not made a valid appraisement.—*U. S. v. Muller* (C. C. A.), T. D. 28518.

Commissions.—The finality to appraisements given by section 13, customs administrative act of 1890, does not extend to the inclusion of items independent of the actual value of the goods; and, where appraising officers have included

in their valuation improper items, inquiry as to the legality of their action can not be cut off by their report that they added the contested items "to make market value," and in a case where a so-called converters' commission was included in the appraised value, it was proper to admit evidence as to the nature of the item.—*Erlanger v. U. S. (C. C. A.)*, T. D. 28236.

Advance on Goods Not Examined.—It is illegal for a local appraiser to advance the value of merchandise not represented by the examined packages, even though he may have before him for examination at least one package in 10, as required by section 2901, Revised Statutes. He must have either the goods he advances or correct and sufficient samples thereof.

Where the appraiser advances the value of goods without examining them or samples of them, he proceeds contrary to law, and therefore his findings are not final and conclusive, but may be reviewed by the Board of General Appraisers in the manner provided in section 14, customs administrative act of 1890.—*U. S. v. Beer (C. C. A.)*, T. D. 27753; affirming 142 Fed. Rep. 199; T. D. 26880; and T. D. 26354 (G. A. 6035).

Inland Freight—Notice of Advance.—Where an appraiser adds an item of inland freight to the dutiable amount stated upon an invoice, the presumption is that he adds it because, in his judgment, the principal market for the commodity in question was the point from whence it was exported and the cost of bringing the merchandise to that point was a part of the market value. The item of freight, as such, could not be dutiable, but becomes dutiable only as a part of the market value of the commodity. A question growing out of the addition of such an item therefore must be one of reappraisal under section 13 of the act of 1890.

Where the appraiser adds to the value of the merchandise stated upon an invoice an item of inland freight which increases the amount upon which the importer is required to pay duty, it is, in effect, an addition made by him to the market value of the merchandise; and notice of this advance must be given to the importer as provided in section 1267 of the Customs Regulations of 1899. If this notice is not given, the appraisement is not conclusive against the importer and liquidation thereon is illegal.—T. D. 27671 (G. A. 6465).

Power of Collector.—In the reliquidation of an entry the collector may only change the classification and the rate of duty to be applied to merchandise; he can not change its value unless there has been a reappraisal.—T. D. 27492 (G. A. 6402).

Means of Information—Sending Samples to Other Ports.—In regard to the action of the appraising officer of a small port with respect to merchandise as to the value of which he had no knowledge. *Held*, that he might properly send samples of the merchandise to the appraiser at the port of New York, or use any other available means to acquire information on the subject.—*The Lace House v. U. S. (C. C. A.)*, T. D. 26970.

Method of Appraisement.

DISALLOWANCE OF DISCOUNT.—Where an appraiser, instead of ascertaining the market value of each article of imported merchandise, totaled the invoice price and disallowed certain discounts to which the importers were entitled in order to raise the result to the market value of the goods, *Held*, that the appraisement was not illegal, and that the importers' proper remedy, if dissatisfied, was under section 13, customs administrative act of 1890, by appeal for reappraisal, and not under sections 14 and 15 (*id.*).

TREASURY REGULATIONS NOT MANDATORY.—The method prescribed in the Treasury regulations for calculating the market value of imported merchandise is not mandatory upon appraising officers.—*Meyer v. U. S. (C. C.)*, T. D. 26656.

Value is Unit Price.

LANDED WEIGHT.—The appraisement of imported merchandise is restricted to determining the price or value of the parcel or quantity by which the purchase and sale of the article are made, and has rightfully no reference to the totality of the purchase. If appraisers undertake to ascertain the weight or quantity of goods which should properly be weighed by a United States weigher, their action in that respect is *coram non judice*, and a nullity. *Manhattan Gas Light Co. v. Maxwell* (16 Fed. Cas., 601); *Marriott v. Brune* (9 How., 634); *In re Wyman* (G. A. 4539).

LIQUIDATION ON INVOICED OR APPRAISED VALUE.—Where an appraising officer, on being requested by the collector to report the correct dutiable value of goods, makes a return showing the value of the goods in quantity, and at the same time leaves the value per unit as stated on the invoice to stand unchanged, the collector is justified in rejecting the gross value, and calculating duty at the unit value upon the weight shown by the United States weigher.

ERROR UPON INVOICE.—It can not operate to the benefit of an importer that a clerical error was committed in the multiplication of the value of imported goods by their weight, if it appears that the value per unit is correctly stated and the proper weight is returned by the weigher.—*T. D. 23871* (G. A. 5178).

Dutiability of Items.

ILLEGAL APPRAISEMENT.—Where items are illegally added to the invoice value of goods, either by an appraising or liquidating officer, for the purpose of making dutiable value, such addition may be objected to by protest, and the action of the customs officer may be reviewed by the board of classification and the courts. *Oberteuffer v. Robertson* (116 U. S., 499, 515-6; 6 Sup. Ct. Rep., 462).

OCEAN FREIGHT.—Ocean freight is not properly an item in the dutiable value of imported merchandise under the provisions of the customs administrative act of June 10, 1890. *U. S. v. Zuricaldy* (71 Fed. Rep., 955).

TRANSPORTATION CHARGES FROM PLACE OF PRODUCTION TO PRINCIPAL MARKET.—Charges for transporting merchandise from the place of manufacture to the principal market of the country of production constitute a proper item of value in determining the market value of such merchandise in that principal market.

DUTIABILITY OF ITEMS ON INVOICE.—The determination whether an item is dutiable is the function of the liquidating rather than of the appraising officer.—*T. D. 23851* (G. A. 5170).

Invoice—Dutiable Value.

BILL OF SALE.—A bill of sale showing the cost of materials out of which imported merchandise has been manufactured can not be treated as the invoice, or "statement in the form of an invoice," of the merchandise itself; and where the appraised value of the merchandise is lower than the value shown by the bill of sale it is error for the collector to assess duty on the latter instead of on the former.

FINALITY OF APPRAISEMENTS.—Neither the board of classification nor the courts have power to interfere with an appraisement made without irregularity or excess of power on the part of the appraising officers. *Muser v. Magone* (155 U. S., 240; 15 Sup. Ct. Rep., 77); *Passavant v. U. S.* (148 U. S., 214; 13 Sup. Ct. Rep., 572).—*T. D. 23789* (G. A. 5157).

ILLEGAL RELIQUIDATION ON REPORT OF TREASURY AGENT.—Goods were entered and duly appraised and then delivered to the importer. Subsequently, upon the ex parte report of a special agent of the Treasury Department, representing that the goods had been undervalued, the collector reliquidated the

entry on the basis of the value suggested by the special agent. Against this reliquidation the importer protested, claiming that duty could be assessed only on the basis of the appraised value. *Held*, that the collector's action was tantamount to a new appraisement, which he was without legal authority to make. In re Stewart et al. (G. A. 4015) and cases cited.

An appraisement of imported merchandise, made by a local appraiser in a case of which he has jurisdiction, is final and conclusive, unless an appeal is taken from his decision in the mode prescribed by law. *U. S. v. Morewood* (94 Fed. Rep., 639); *Wills v. Russell* (30 Fed. Cas., 70).

When goods have passed out of the control of the customs officers an appraisement can not lawfully be held. *U. S. v. Loeb* (107 Fed. Rep., 692; 46 C. C. A., 562).—T. D. 23601 (G. A. 5100).

Weight of Merchandise Subject to Ad Valorem Duty.—Certain merchandise was invoiced upon the basis of net weight, and the appraiser returned a value per ton based on the net weight of the merchandise in packed condition. *Held*, that to find the total dutiable value such appraised value must be multiplied by the net weight of the importation as returned by the United States weigher, and it is error for the collector to base his computation upon gross weight.

It seems that the collector's action would have been justified had the value per ton been appraised upon the basis of gross weight.—T. D. 23553 (G. A. 5085).

Dutiability of Samples.—Whenever imported goods of any description, not expressly exempted from duty by law, are given a value in the invoice or entry duty must be assessed upon such value, even though the appraiser returns the articles as of no commercial value. In re Smith, T. D. 21327 (G. A. 4467), followed.

Appraising officers have no right to find a lower value for imported merchandise than that stated in the invoice or entry (*Kimball v. Collector*, 10 Wall., 436, 453).—T. D. 23111 (G. A. 4940).

When Country of Exportation is Not the Country of Production.—Merchandise imported from one country, having been produced in and exported from another country, is lawfully appraised at its actual value in the principal markets of the country from which immediately imported, unless it appear that it was in good faith destined for the United States at the time of original shipment, without any contingency of diversion. *Held*, accordingly, that goods from Germany and Austria, exported to Hamilton, Canada, and then imported into the United States, were dutiable on the basis of their value in Canada, there being no evidence which would justify the conclusion that this country was the ultimate destination of the goods at the time of original shipment, although they remained in bonded warehouse while in Canada and paid no Canadian duties.—T. D. 22338 (G. A. 4719).

Dutiable Value, Paintings, and Frames.—Oil paintings (dutiable under paragraph 465, act of 1890) invoiced without mentioning frames. Appraiser added value of frames to make invoice value. It was found that the value of the frames was included in the invoice value.—T. D. 17402 (G. A. 3593).

Appraising Officers Return Conclusive Unless Overthrown by Evidence.—The return of the appraiser is conclusive as to the character of the merchandise and is binding unless it is overthrown by competent evidence.—T. D. 17335 (G. A. 3555).

Measurement of Goods, Misstated in Invoice.—The appraiser is authorized to measure the goods, so as to make an intelligent return.—T. D. 13556 (G. A. 1828); T. D. 16339 (G. A. 3168).

Dutiable Value of English Goods from Canada.—Sheet steel dutiable under paragraph 146, act of 1890, was manufactured in Sheffield, England, and sold to parties in Montreal, Canada, rejected by consignee, and resold to importer at invoice price. The appraiser found the invoice price to be the market value in England, and added thereto the cost and freight from England to Montreal to get market value at Montreal. *Held*, (1) that it was the duty of the appraiser to ascertain the market value at the principal market of the country from whence exported; (2) had the appraiser determined that Montreal was one of the principal markets of the British dominions and found the value based on that fact his finding would have been conclusive on the importer unless he had called for a reappraisal; (3) he could not raise the question of value by protest; (4) when the appraiser proceeds on a wrong principle to raise values his action is impeachable by protest; (5) the word "country" embraces all the possessions of a foreign state which are subject to the same supreme executive control; and (6) the market value at Sheffield was the dutiable value.—T. D. 12145 (G. A. 1007).

Value Advanced by Adding Percentages.—The Board of General Appraisers in appraising Swiss goods made a report adding percentages to value as follows: "On items invoiced at 18 centimes, stitch rate, add 36 per cent; on balance of goods add 10 per cent." They did not, however, carry out on the invoice the value per aune (the Swiss unit) in francs and centimes, though it could easily be computed. *Held*, that there was no violation of the requirements of section 10, act of June 10, 1890.

Article 845, Regulations of the Treasury, 1892, provides that appraisers should make advances on invoices on the unit value declared on entry, in the currency in which the invoice is made out, in a specific sum per pound, yard, or other unit of value, and not by percentages, and in the weight, gauge, or measure expressed in the invoice, but that no average valuation shall be made, and that the additions shall be made by writing on the invoice opposite each item advanced the words "add to make market value," stating in numerals the amount necessary to make the price per unit. *Held*, directory and not mandatory, in the sense that neglect to conform thereto would create an illegal appraisal.

Under section 13, act of June 10, 1890, formal notice to the board of dissatisfaction as to reappraisal by a general appraiser, by the importer or collector, is not needed to give the board of three general appraisers jurisdiction; transmission to the board of the designated papers is sufficient, and hence the fact that a collector was satisfied but ordered a reappraisal pursuant to instructions from the Treasury Department does not nullify the action of the board. T. D. 21498 (G. A. 4521) and the circuit court reversed.—U. S. v. Loeb (C. C. A.), 107 Fed. Rep., 692.

Merchandise Sent Out of District for Appraisal.—Section 10 relates to the duties of appraisers only, not to collectors as custodians of imported goods awaiting appraisal. It confers on the collector no right to yield custody of the goods to other persons for purposes of appraisal, and the collector at Providence was enjoined from sending an importation of diamonds to New York for submission to trade experts.—*Bruhl v. U. S.*, 123 Fed. Rep., 957.

Appraisal—Recall for Correction of Clerical Errors.—Under article 1126 of the Treasury Regulations of 1892, after an appraisal has been completed and a return thereof made to the importer and accepted by him, the appraisal can not be recalled, even for the correction of a clerical error, where the effect of such correction is to change the appraisal; and if such action is taken the importer has the right to protest against the second valuation on the ground that it amounts to a new appraisal and is without jurisdiction.

and is not bound to give notice of dissatisfaction, as provided in section 13 of the customs administrative act of 1890.—*U. S. v. Morewood & Co.*, 94 Fed. Rep., 639.

DECISIONS UNDER EARLIER STATUTES PERTAINING TO SAME SUBJECT MATTER.

Ascertainment of Value.—Under the tariff act of March 2, 1833, the Government was authorized to collect duties upon goods imported after June 30, 1842, and the regulations for ascertaining the amount of duties provided by existing laws are to be applied so far as they are applicable to the collection of duties under said act of 1833, though the place in reference to which the value of goods was to be appraised is changed from the foreign country to the port of importation and no corresponding change is made in the instrumentalities for ascertaining the home value.—*Aldridge v. Williams*, 3 How., 1.

The appraisers are appointed with powers, by all reasonable ways and means, to appraise, estimate, and ascertain the true and actual market value and wholesale price of the importation. The exercise of these powers involves knowledge, judgment, and discretion. We hold that where jurisdiction is delegated to any public officer or tribunal over a subject matter and its exercise is confined to his or their discretion the acts done are in general binding and valid as to the subject matter. The only questions which can arise between an individual and the public or any person denying their validity are power in the officer and fraud in the party. All other questions are settled by the decision made or the act done by the tribunal or officer, whether executive, legislative, judicial, or special, unless an appeal or other revision is provided for by some appellate or supervisory tribunal prescribed by law.

The appraisement is conclusive of the nature of the article and its market value in the place from whence it was imported.—*Belcher v. Linn*, 24 How., 508, 522.

Defendants contracted at Lyons, France, with manufacturers to deliver at his store in New York certain goods, free of all charges, at a certain price in dollars indicated by certain cipher marks. The manufacturers subsequently imported the goods, and upon appraisement the defendant was examined as a witness and required to state the price in dollars indicated by the cipher marks, which he declined to do, as prejudicial to his interests. There was no evidence of any concealment or fraud in the importation or of the absence of the ordinary means of ascertaining the market value of the goods in the principal markets of France, which was the only ultimate question for the appraisers' determination. *Held*, that the discretion of the appraisers in putting inquiries is not unlimited, but restricted by the purposes of the act—by the limitation of Revised Statutes 2902—to "reasonable ways and means" and the exercise of a sound and fair judgment of what was material to the ascertainment of the market value in the principal markets of the country of exportation; that the inquiry as to the contract price for the future delivery of goods at a store in New York, free of all charges, was *prima facie* incompetent, because too remote and uncertain as evidence of foreign value, and resort to such evidence was justifiable only upon the failure of the ordinary and appropriate proofs; that to compel such disclosures, without necessity, from a stranger to the importation, when such disclosure would be prejudicial to his business interests, was not within the reasonable ways and means prescribed by the statute nor the exercise of a sound and reasonable discretion, and was therefore in excess of the appraisers' lawful power in the absence of special reasons to justify it; and that no penalty, therefore, was legally incurred (*R. S.* 2923).

Under statutes conferring a general discretionary power without qualification, the exercise of the officers' discretion is limited by legal construction

to the evident purposes of the act and to what is known as a sound and legal discretion, excluding all arbitrary, capricious, inquisitorial, and oppressive proceedings.

Though the acts of special tribunals can not be in general reviewed except as provided by law, they may be examined collaterally as respects their jurisdiction and as regards acts in excess of power, and as to such acts their proceedings will be held unauthorized and void.—*U. S. v. Doherty*, 27 Fed. Rep., 730.

Appraisal of Peruvian Bark.—The official appraisers may make a demand for papers even after their own decision has been made.

In an action against the collector of customs to recover duties paid under protest on an importation of Peruvian bark, where it appeared that the official appraisers, under the instruction of the Secretary, had predicated their valuation of the bark on the quantity of sulphate of quinine produced by the several packages in the invoice, held that the Secretary had no power to fix a chemical analysis of the bark as the only test of its dutiable value. (See circular of Nov. 2, 1848.)

The law fixes the duties upon the market value at the port of exportation; the appraisers must and can only look at the fair market value of the article among those trading in it at the port of exportation; and he can only be required to adopt the methods usually adopted by merchants in making purchases.

But still the appraisers, when they suspect a wrong to the Government, have a right to employ this means as a test by which, with the other knowledge and information in their power, they may be able to arrive at a correct estimate of the true value of the article imported.—*Bartlett v. Kane*, Taney, 186; 2 Fed. Cas., 971.

Appraisement by Public Appraisers.—An appraisement by public appraisers is conclusive as to dutiable value unless it is appealed from, when there is no protest as to the regularity of the appraisal.

Where a portion only of the public appraisers act in making an appraisement, their action when not objected to by protest for that reason is equivalent to the concurrent action of all the appraisers. It is only necessary that those who certify to the appraisal should have actually made it.—*McCall v. Lawrence*, 3 Blatchf., 360; 15 Fed. Cas., 1234.

Appraisement—Collector's Powers.—The statute gives the collector the right to order the appraisers to make a reappraisement. The appraisement determines the value of the importation. The collector determines the rate of duty fixed by law and assesses it upon the value as found by the appraisement. The collector can not substitute his own appraisement in lieu of the one found by the appraisers.—*Wills v. Russell*, Holmes, 228; 30 Fed. Cas., 70.

Appraisement by Deputy Appraiser.—The principal appraisers must act in person and upon their own inspection in every case, and an appraisal made by them upon an inspection and certificate of a deputy appraiser only is inoperative and void.

In an action to recover duties illegally exacted it appeared that the importation consisted of goods obtained by barter on the west coast of Africa in March, 1849, for which the master, who had no invoice, made one after his arrival in port, which invoice was received by the customs officers. The deputy appraiser, from his knowledge of the articles imported, but without instructions, added more than 10 per cent to the invoice value, and a penalty of 20 per cent was consequently added and exacted. The deputy sent the invoice to the regular appraisers, two of whom sanctioned it by indorsement, and in this

condition it was returned to the collector, who assessed the duties and imposed the penalty. *Held*, that the appraisal was void, as being the act of the deputy and not that of the principal appraisers.—*Barker v. Lawrence, Betts' Scr. Bk.*, 258; 2 Fed. Cas., 816.

Appraisement on Samples.—An appraisement of a cargo of sugar based solely upon samples taken from a part of the cargo after most of it had been sold and delivered to purchasers held insufficient.

The appraisement of a cargo of sugar should be based upon the market value at the date of the actual loading of the cargo and not at the date of the sailing of the ship.—*U. S. v. McKean* (N. Y. Times, Dec. 22, 1857), 26 Fed. Cas., 1100.

Cost at Place of Exportation.—A manufacturer living in an inland town of a foreign country might, under section 86, act of 1799, and before the act of April 20, 1818, invoice any article, manufactured by him and exported to this country, at the actual cost of the raw material and the price or value of the labor employed in its manufacture, adding the expense of transportation to the seaport whence it was shipped. This is the cost at the place of exportation within the meaning of the law.—*95 Bales of Paper v. U. S.*, 1 Paine, 149; 18 Fed. Cas., 266.

Deputy Collector as Appraiser.—At a port where there are no appraisers a deputy collector may examine goods entered for warehousing to ascertain their dutiable value, as well as the collector.—*Spring v. Russell*, 1 Lowell, 258; 8 Int. Rev. Rec., 193; 22 Fed. Cas., 989.

Evidence of Market Value.—In cases of the importation of goods by the manufacturer the value at which he is required to invoice them is the actual market value at the time and place of manufacture.

By "market value" is meant the price at which the manufacturer holds them for sale, the price at which he freely offers them in the market, the price which he is willing to receive, the purchasers are willing to pay, in the ordinary course of trade.

Among the best evidences of market value would be a series of sales, general in their character, not accompanied by any exceptional circumstances tending to make one or more of such sales higher or lower than it would otherwise be; also a single sale, if made in the ordinary course of trade. Other evidence would be offers by merchants or manufacturers to sell to persons supposed by them to come in good faith as buyers, such offers being made in the usual course of trade and under such circumstances as generally attend the sale of merchandise.

It is only in cases where such evidence as the foregoing is wanting that it becomes proper to resort to such inferior evidence as the actual cost of raw materials to the manufacturer with the addition of a manufacturer's profit. Even in such cases this cost is not to be received as market value, but only as a substitute for market value.

In cases where such inferior evidence is resorted to, the cost of the raw materials is not to be based upon the actual price paid for them by the manufacturer, if he purchased them long prior to making them up and at a time of depression in the market, but rather upon the actual price of raw material at the time when the manufacture of the goods was completed.—*U. S. v. 16 Cases of Silk Ribbons*, 12 Int. Rev. Rec., 175; 27 Fed. Cas., 1099.

The law requires the best evidence to be given of any fact. A series of sales, or a single sale in the ordinary course of trade, is one of the best evidences of market value. Offers by merchants and manufacturers to sell their goods in the usual course of trade are among the best evidences of their market value.—*Six Cases of Silk Ribbons*, 22 Fed. Cas., 247.

Examination by Merchant Appraisers.—It seems that the proper construction of section 67, act of 1799, requires that each package shall be examined by a customhouse officer in the presence of two merchants and that to constitute such presence the merchant must be in such a situation as to witness such examination and to see and testify to a part, at least, of the contents of each package.—*U. S. v. 1,363 Bags of Merchandise*, 2 Spr., 85; 25 Law Rep., 600; 27 Fed. Cas., 340.

Invoice Value.—A collector is not bound to take the invoice value of goods, supported by the owner's oath on entry, as their dutiable value.

The collector is justified, in the absence of written notice of a different state of facts, in assuming the place of the shipment of the goods, as stated in the entry invoice, to be the place of their purchase, and the date of the invoice as the time of their purchase.—*Focke v. Lawrence*, 2 Blatchf., 508; 9 Fed. Cas., 329.

Legality of Appraisement.—The value of the merchandise at the time of its procurement is to be ascertained, not its value at the time of exportation.

An appraisement can be lawfully made only after a personal examination by the appraisers.—*Greely v. Thompson*, 10 How., 225, 235, 238, 239.

Merchandise Sent Out of District for Appraisal.—The circuit court has no authority to enjoin the appraisers from taking evidence anywhere as to the value of an importation.

The court refuses to enjoin the appraisers of gloves from carrying out of the district samples of the gloves for the purpose of obtaining evidence as to their value.

The appraisers are not bound by prior appraisals of the value of goods of the same kind imported by the same party.—*Goodsell v. Briggs, Holmes*, 299; 10 Fed. Cas., 616.

Objection to Appraiser Acting as Such.—The official report of the appraiser is *prima facie* evidence of the examination. An appraiser is a quasi judge. His acts as such are not purely ministerial. If such an office has been colorably created and one commissioned under it who has discharged *de facto* its duties, his acts, so far as the public or third parties are concerned, are as valid as those of one acting *de jure*. The appraiser general who acted in this case was appointed under a clause in the general appropriation act of 1853 (10 Stat., 202). The objection was to his acting as appraiser.—*Gibb v. Washington*, 1 McAll., 430; 10 Fed. Cas., 288.

The collector having jurisdiction of customs cases and the appointment of a proper appraiser, any objection to the appraiser must be made first to the collector and afterwards due protest and appeal made to the Secretary in order to entitle the importer to raise such objection as a defense when used for the liquidated duties. The recent cases of *U. S. v. Schlesinger* (120 U. S., 109) and *Oelbermann v. Merritt* (123 U. S., 356) have not changed the former rule.—*U. S. v. Earnshaw* (D. C.), 45 Fed. Rep., 782.

Period of Exportation.—Under this act all goods subject to an *ad valorem* duty are to be appraised at the period of exportation, and this includes goods obtained otherwise than by purchase.

The plaintiff entered into a contract with T. & Co. for the transportation of iron from Wales to the United States, in pursuance of which T. & Co. employed coasting vessels to bring it from Wales to Liverpool, where it was transhipped on board their packets for Boston. *Held*, that the "period of exportation," at which the market value was to be ascertained, was the time when the goods left Liverpool for the United States.

Section 17 of the act of 1842 must, since the act of 1851, be held to point out the mode and consequence of all appraisements, whether the goods were procured by purchase or not.—*Forman v. Peaslee*, 21 Law Rep., 273; 9 Fed. Cas., 452.

Period of Valuation.—The provisions of the act of 1863 that when foreign goods brought or sent into the United States are sent otherwise than by purchase they shall be invoiced "at the actual market value thereof at the time and place when and where the same were procured or manufactured," does not mean any locality more limited than the country where the goods are bought or manufactured. The standard to be applied is their value in the principal markets of that country. The commerce into which they enter is international, and the language of the statute must be construed in a large and liberal spirit. Proof of the value of the wines at Paris, if there was no other evidence upon the subject, was sufficient to enable the jury to arrive at a proper conclusion.

Prices current obtained from the agent of a manufacturer or from dealers in manufactured articles generally, and which have been prepared and used by the parties furnishing them in the ordinary course of their business, are so far evidence of the value of the articles mentioned in them as that they may be submitted to the jury as "throwing light" on the matter; as "some guides to candid men" and for their "consideration." And this rule was held to apply so far as that the comparative value at the town of manufacture (Rheims) and at the capital of the country (Paris) of champagne wines made by one manufacturer (Cliquot) was allowed to be shown by the prices current giving the value of that made by others (Mumm, Moët & Chandon), it not appearing by evidence in the case set forth in the bill of exceptions, or by any admission of the judge upon the bill, that such evidence was given, but that the articles were the same in price, kind, and quality.

Whether there is sufficient proof of agency to warrant the admission of the acts and declarations of the agent in evidence is a preliminary question for the court.

Whatever is done by an agent in reference to the business in which he is at the time employed, and within the scope of his authority, is said or done by the principal, and may be proved, as well in criminal as in civil cases, in all respects as if the principal were the actor or the speaker.—*Cliquot's Champagne*, 3 Wall., 114, 140, 142, 143.

Under this section the collector is justified in taking the time of the shipment from abroad of goods as the time of the purchase, unless he is notified by the entry or invoice, or protest, or in some other way, that some other time was the time of their purchase, and should be taken as the time of their appraisal.—*Crowley v. Maxwell*, 3 Blatchf., 401; 6 Fed. Cas., 915.

The market value at the time of manufacture is the proper value to be stated by the manufacturer in his invoice instead of the value at the time of the shipment.—*U. S. v. 18 Bales of Blankets*, 7 Int. Rev. Rec., 69; 25 Fed. Cas., 985.

This act changes the period of valuation from the time of purchase to the time of exportation.

This act only varies the provision of section 8, act of July 30, 1846, so far as concerns the period of time in reference to which the valuation of imports is to be made and does not affect the question of the imposition of extra duties because of undervaluation.

Under section 17, act of 1842, the appraisement determines the dutiable value.—*Morris v. Maxwell*, 3 Blatchf., 143; 17 Fed. Cas., 824.

Where orders for goods are accepted by foreign vendors at the ruling market price, but the price advances greatly before the goods are delivered for ship-

ment and the invoices made out, the purchase is to be considered as made, within the meaning of the tariff acts, at the date of the invoice and not at the date the orders are accepted, and the appraisers may raise the valuation accordingly.—*Wilson v. Lawrence*, 2 Blatchf., 514; 30 Fed. Cas., 138.

Principal Market of Country of Exportation.—Appraisers must determine what are the principal markets of the country from which the goods are imported in order to determine what is the actual market value or wholesale price there at the period of exportation, but their powers do not authorize them to extend their inquiries beyond what is necessary to enable them to appraise the value as required by law.—*U. S. v. Nash*, 4 Cliff., 107; 27 Fed. Cas., 75.

The word "country," in the act of July 30, 1846, section 8, includes all of the dominions of a country like Great Britain; and the decision of the appraiser that the principal markets of that country for a particular class of goods are London and Liverpool is valid, though the importation was directly from Halifax.

Under the act of 1846, where goods were imported from countries other than that of their production or manufacture, their dutiable value was to be determined by that of the principal markets of the country from which they were imported into the United States.—*Stairs v. Peaslee*, 18 How., 521.

Where iron was purchased in Wales and sent to Liverpool and was afterwards shipped from Liverpool to New York, held that the appraisement of the iron at its market value in Liverpool at the time of its shipment from that port was proper, Liverpool being a principal market of the country of the production of the iron.—*Goddard v. Maxwell*, 3 Blatchf., 131; 10 Fed. Cas., 510.

Return of Appraiser—When Conclusive.—In an action to recover duties paid under protest the appraisement, though conclusive in respect to errors of judgment and mistaken ideas of quality or value or the elements entering into the cost of manufacture, may yet be inquired into in respect to any alleged illegality in the action of the appraisers, such as adding illegal items to make up increased value or proceeding upon principles of valuation which the statute condemns. Sustaining the circuit court.—*Magone v. Origet* (C. C. A.), 70 Fed. Rep., 778.

The official appraisal not appealed from is conclusive as to the dutiable value of goods when the protest does not point out any violation of law in making the appraisement.—*Roller v. Maxwell*, 3 Blatchf., 142; 20 Fed. Cas., 1136.

R. S. 2930, 2931, 3011 are to be construed together, and the decision of the proper officer, after appeal and without fraud, as to the dutiable value of imports is final and conclusive against the importer.—*Stewart & Co. v. Merritt*, 2 Fed. Rep., 531.

An actual appraisement is conclusive as to the value of an importation in the absence of an appeal to the merchant appraisers, and the collector is required to assess duty on such valuation.—*Saxonville Mills v. Russell*, 1 Fed. Rep., 118.

The price fixed by the appraisers (act of Aug. 30, 1842, sec. 16, 5 Stat., 548) is conclusive as to the dutiable value of goods, and the importers have no right to give evidence against it.—*Hertz v. Maxwell*, 3 Blatchf., 137; 12 Fed. Cas., 59.

Review of Appraisement.—Although the appraisement by customs officers is not ordinarily open to judicial review, that rule does not apply when the value is determined by a classification made by the officer.—*Erhardt v. Schroeder*, 155 U. S., 124.

Time of Exportation.—The duties on foreign merchandise are to be computed on its value on the day of sailing from the foreign port whence it is imported, and the value for such purpose is the wholesale market price there on that day.—*Irvine v. Redfield*, 23 How., 170.

As of what date should the appraisers estimate the value of the articles? The date of the sailing of the vessel.

Some collectors had made estimate at the date of the purchase; others the date of shipment. Mr. Secretary Walker, on July 6, 1847, directed the valuation to be "at the date of shipment;" Secretary Meredith, on July 5, 1850, declares "that the period of the exportation of the merchandise is the time at which the value of any article is to be fixed by the appraisers." That in ordinary cases the date of the bill of lading may be regarded as the "period of exportation."

The value at the port of export is to be ascertained by the day of the sailing of the vessel and not by her clearance or other papers.

Where an importation of hemp in one vessel by the same party is divided into two invoices and two entries, they can not be treated so as to reduce their whole valuation to less than 10 per cent above the entry, but each must stand on its own appraisalment.—*Sampson v. Peaslee*, 20 How., 571, 576, 577, 579.

True Valuation.—Where goods subject to an ad valorem duty are purchased in a foreign place and exported to the United States, a true valuation in the invoice is the actual cost at which they were purchased.

Where goods subject to ad valorem duty are manufactured in a foreign country and exported to the United States by the manufacturer, a true valuation in the invoice is the market value or value at the place of exportation.—*U. S. v. 12 Casks of Cudbear*, Gilp., 507; 28 Fed. Cas., 236.

Undervaluation Suspected on Invoice.—Section 11 of the act of April 20, 1818, is constitutional, but it has not changed the basis of valuation on which duties are ordinarily to be estimated. The "actual cost" is still the true basis, and an appraisalment under this section is never to be ordered by the collector unless he personally suspects that the invoice is undervalued, for this section applies only to fraudulent invoices.

An appraisalment regularly made under section 9, act of April 20, 1818, is conclusive as to the value on which the duty is to be estimated, and no evidence is admissible to prove that the actual cost or value is different.—*Tappan v. U. S.*, 2 Mason, 393; 23 Fed. Cas., 690.

The words "true value," in the act of April 20, 1818, section 11, mean the actual cost thereof to the importer at the place whence the goods were imported, and the collector had not the right to direct an appraisalment because he suspected or because in fact the goods were invoiced below their current market value at the place whence they were exported.

If the collector forms an opinion that there are just grounds to suspect the invoice does not truly state the actual cost of the goods and directs an appraisalment, no inquiry can be made as to the grounds of that opinion.—*U. S. v. Tappan*, 11 Wheat., 419.

Valuation of Merchandise Paying a Specific Rate of Duty.—Values of imported goods subject to specific duty are by section 8 of the act of February 10, 1820 (3 Stat., 541), ascertained in the same manner as those subject to ad valorem duty, but the requirement is for statistical purposes different from those described in the acts making provision for the appraisalment of articles subject to ad valorem duty.

In the appraisalment of goods imported in 1861, subject to a specific duty, the decision of the appraisers is not conclusive as in the case of goods subject to an ad valorem duty.

The determination of the appraisers under section 5, act of March 1, 1823 (3 Stat., 729), as to the true and actual market value and wholesale price of an importation in the principal markets of the country from which it was exported is conclusive in the premises.

But these duties are by section 1, act of March 3, 1851 (9 Stat., 629), limited to goods, wares, and merchandise subject to an ad valorem duty.—*Bailey v. Goodrich*, 2 Cliff., 597; 2 Fed. Rep., 369.

1913 L. That when the actual market value, as defined by law, of any article of imported merchandise, wholly or partly manufactured and subject to an ad valorem duty, or to a duty based in whole or in part on value, can not be ascertained to the satisfaction of the appraising officer, such officer shall use all available means in his power to ascertain the cost of production of such merchandise at the time of exportation to the United States, and at the place of manufacture, such cost of production to include the cost of materials and of fabrication, and all general expenses to be estimated at not less than 10 per centum, covering each and every outlay of whatsoever nature incident to such production, together with the expense of preparing and putting up such merchandise ready for shipment, and an addition of not less than 8 nor more than 50 per centum upon the total cost as thus ascertained; and in no case shall such merchandise be appraised upon original appraisal or reappraisal at less than the total cost of production as thus ascertained. The actual market value or wholesale price, as defined by law, of any imported merchandise which is consigned for sale in the United States, or which is sold for exportation to the United States, and which is not actually sold or freely offered for sale in usual wholesale quantities in the open market of the country of exportation to all purchasers, shall not in any case be appraised at less than the wholesale price at which such or similar imported merchandise is actually sold or freely offered for sale in usual wholesale quantities in the United States in the open market, due allowance by deduction being made for estimated duties thereon, cost of transportation, insurance, and other necessary expenses from the place of shipment to the place of delivery, and a commission not exceeding 6 per centum, if any has been paid or contracted to be paid on consigned goods, or profits not to exceed 8 per centum and a reasonable allowance for general expenses (not to exceed 8 per centum) on purchased goods.

SEC. 28.

1909 Subsec. 11: That when the actual market value, as defined by law, of any article of imported merchandise, wholly or partly manufactured and subject to an ad valorem duty, or to a duty based in whole or in part on value, can not be ascertained to the satisfaction of the appraising officer, such officer shall use all available means in his power to ascertain the cost of production of such merchandise at the time of exportation to the United States, and at the place of manufacture, such cost of production to include the cost of materials and of fabrication, and all general expenses to be estimated at not less than 10 per centum, covering each and every outlay of whatsoever nature incident to such production, together with the expense of preparing and putting up such merchandise ready for shipment, and an addition of not less than 8 nor more than 50 per centum upon the total cost as thus ascertained; and in no case shall such merchandise be appraised upon original appraisal or reappraisal at less than the total cost of production as thus ascertained. The actual market value or wholesale price, as defined by law, of any imported merchandise which is consigned for sale in the United States, or which is sold for exportation to the United States, and which is not actually sold or freely offered for sale in usual wholesale quantities in the open market of the country of exportation to all purchasers, shall not in any case be appraised at less than the wholesale price at which such or similar imported merchandise is actually sold or freely offered for sale in usual wholesale quantities in the United States in the open market, due allowance by deduction being made for estimated duties thereon, cost of transportation, insurance, and other necessary expenses from the place of shipment to the place of delivery, and a commission not exceeding 6 per centum, if any has been paid or contracted to be paid on consigned goods, or a reasonable allowance for general expenses and profits (not to exceed 8 per centum) on purchased goods.

1890 SEC. 11 (as amended by sec. 32, act of July 24, 1897). That, when the actual market value as defined by law, of any article of imported merchandise, wholly or partly manufactured and subject to an ad valorem duty, or to a duty based in whole or in part on value, can not be otherwise ascertained to the satisfaction of the appraising officer, such officer shall use all available means in his power to ascertain the cost of production of such merchandise at the time of exportation to the United States, and at the place of manufacture; such cost of production to include the cost of materials and of fabrication, all general expenses covering each and every outlay of whatsoever nature incident to such production, together with the expense of preparing and putting up such merchandise ready for shipment, and an addition of not less than 8 nor more than 50 per centum upon the total cost as thus ascertained; and in no case shall such merchandise be appraised upon original appraisal or reappraisal at less than the total cost of production as thus ascertained. It shall be lawful for appraising officers, in determining the dutiable value of such merchandise, to take into consideration the wholesale price at which such or similar merchandise is sold or offered for sale in the United States, due allowance being made for estimated duties thereon, the cost of transportation, insurance, and other necessary expenses from the place of shipment to the United States, and a reasonable commission, if any has been paid, not exceeding 6 per centum.

DECISIONS UNDER THE ACT OF 1913.

Phonograph Master Records.

"COST OF PRODUCTION."—The compensation paid to talent for the production of phonograph records is an element in the "cost of production" of such records under paragraph L of section 3.

CONSTRUCTION—PARAGRAPH L, SECTION 3.—The provision in paragraph L of section 3, "all general expenses to be estimated at not less than 10 per centum," does not authorize appraising officers to fix general expenses at any sum greater than 10 per cent of the total expenses which to them may seem proper and without regard to the actual general expenses.

"COST OF MATERIALS AND OF FABRICATION"—"GENERAL EXPENSES."—Money expended in the production of phonograph records for "locating room, moving and hire of piano, wages of boy at laboratory, and rent of laboratory, furniture, and curtains" is not a part of the "costs of materials and of fabrication," but within the category of "general expenses" under paragraph L of section 3.—*Austin, Baldwin & Co. v. U. S. (Ct. Cust. Appls.), T. D. 36505; (G. A. 7756) T. D. 35593 reversed.*

COST OF PRODUCTION.—Wax disks having indentations in the nature of lines or tracks impressed on the surface thereof by means of a needle of a recording machine, which indentations were caused by vibrations of the human voice or musical instruments, the disks being thereby converted into records which mark the initial step in the production of commercial records used in phonographs and similar instruments, were, in the absence of an ascertainable market value in the country of exportation, re-appraised by a board of three general appraisers on the basis of the cost of production. *Held*, that in ascertaining the cost of production the compensation paid to the artists and the expenses incurred in producing the sound vibrations on the disks were properly included by the reappraisal board.

SCOPE OF PARAGRAPH L.—Paragraph L of section 3, tariff act of 1913, provides that "when the actual market value, as defined by law, of any article of imported merchandise, wholly or partly manufactured and subject to an ad valorem duty, or to a duty based in whole or in part on value, can not be ascertained to the satisfaction of the appraising officer," such officer shall appraise the merchandise on the basis of the cost of production. *Held*, that in ascertaining the cost of production under that paragraph all expenses, of whatsoever

nature, incident to the production of the merchandise, should be included.—T. D. 35593 (G. A. 7756).

Appraisement of Zinc-Bearing Ores.

UNDERVALUATION.—When zinc ore was entered, in accordance with the estimate on the consular invoice, as being 40 per cent zinc, and the subsequent official assay showed 46.6 per cent zinc, there was no undervaluation such as would subject it to the "additional duty" provisions of paragraph I of section 3. But when the entry stated the market value of the zinc in a ton of 40 per cent zinc ore to be less than the consular invoice showed, less than the price stated for it in the contract under which it was purchased, and less than the true market value as found by the appraiser, there was.

CONSTRUCTION—PARAGRAPH N, SUBSECTION 1, SECTION 4, AND PARAGRAPH I OF SECTION 3, TARIFF ACT OF 1913.—The fact that zinc ore was entered for rewarehousing to be smelted and the zinc exported does not relieve it of the additional duty incurred under paragraph I of section 3, tariff act of 1913, for undervaluation, since paragraph N, subsection 1, section 4, provides that the amount of the duties payable upon such imported ores at the time of their importation shall stand charged against the bonds of the bonded warehouses, and that the metals producible from the bonded ores or any portion thereof may be withdrawn for domestic consumption upon the payment of the duties chargeable against an equivalent amount of ores from which said metals would be producible in their condition as imported. Especially is this true in view of the provision of paragraph I, that the additional duties levied thereunder shall not be refunded "in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback."

CLERICAL ERROR, MANIFEST.—An understatement of the market value per ton of zinc ore, varying from the consular invoice and from the price stated in the contract for purchasing it, the arithmetical extension in the entry being correctly made upon the basis of the declared price per ton, declared number of tons, and declared percentage of zinc content, is not manifest clerical error within the meaning of paragraph Y of section 3, tariff act of 1913.

CONSTRUCTION—PARAGRAPH 162, TARIFF ACT OF 1913.—The fact that paragraph 162, tariff act of 1913, provides a special method of appraising zinc ores does not relieve them from being entered upon invoices as other importations, nor does it relieve their importer from the consequences of undervaluation.—*National Zinc Co. v. U. S. (Ct. Cust. Appls.)*, T. D. 36461; (G. A. 7823) T. D. 35948 affirmed.

Method of ascertaining the value of zinc in imported ore under the provisions of paragraph L of section 3 based upon the selling price of zinc in the United States.—Dept. Order (T. D. 36446).

Zinc ore to be appraised under the provisions of paragraph L of section 3 of the act of October 3, 1913, on the basis of the zinc contents and the average value of spelter during the week of arrival of the ore in the United States.—Dept. Order (T. D. 35624).

DECISIONS UNDER THE ACT OF 1909.

Royalties on Books.—In the appraisement of books under subsection 11 of section 28, tariff act of August 5, 1909, royalties paid to an author are not to be computed as a part of the cost of production.—Dept. Order (T. D. 31903).

Estimated General Expenses.—The 10 per cent required to be added for general expenses on merchandise appraised under subsection 11 of section 28 of the act of August 5, 1909, should be computed on and added to the combined costs of material and labor. Merchandise consigned for sale, or which has no

established market value in the country of exportation, not to be appraised at less than the wholesale market value in the United States, allowance being made for duty, expenses of importation, and profit.—Dept. Order (T. D. 30016).

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Validity of Reappraisal.

SECTION 11, CUSTOMS ADMINISTRATIVE ACT OF 1890.—That part of section 11, customs administrative act of 1890, relating to the proper ascertainment of dutiable value by an inquiry as to the sale price of the commodity in the United States, is a definition of the powers granted appraising officers in appraisal proceedings, and there is nothing contained there to limit the scope of that provision to cases where no foreign market value appears; it seems rather in fact intended to aid appraising officers to ascertain true foreign market values.

DOMESTIC WHOLESALE PRICE AS A GUIDE.—It is not unfair to the importer to employ, as a basis for computing what was the true value of the commodity on export abroad, the wholesale selling price of a commodity fixed by himself, and the very language of the statute authorizes this to be done.

AN APPRAISEMENT BY BOARD OF THREE GENERAL APPRAISERS.—Where a board of three general appraisers, with jurisdiction of the subject matter and the persons, have proceeded in conformity to law to appraise an importation of foods, their finding is not reviewable by any classification board or by this court.

VALIDITY OF PRECEDING APPRAISEMENTS.—If a reappraisal by a board of general appraisers be held valid it is unnecessary to inquire into the validity of preceding appraisements of the same merchandise.—*Beer v. U. S.* (Ct. Cust. Appls.), T. D. 31526; (G. A. 6788) T. D. 29144 affirmed.

NECESSITY FOR EXAMINING GOODS BY BOARD OF GENERAL APPRAISERS.—In a reappraisal proceeding by a board of three general appraisers it is not necessary that the board examine the merchandise under reappraisal in order to constitute a valid reappraisal, unless it appears that a correct conclusion as to the value of such merchandise could not be arrived at by said board without the examination of the merchandise.

PRICE OF IMPORTED MERCHANDISE IN THE UNITED STATES.—Under section 11 of the customs administrative act of 1890 a board of three general appraisers in the reappraisal of imported merchandise may take into consideration the wholesale price at which such or similar merchandise is sold or offered for sale in the United States.

WEIGHT OF TESTIMONY.—Testimony held not to sustain the allegation of the protest.—T. D. 29144 (G. A. 6788).

Appraisal—Furs.—An appraisal by a local appraiser, by a general appraiser, or by a board of three general appraisers is reviewable on protest, and if their action has been outside the power conferred upon them by statute the appraisal will be set aside. T. D. 18949 (G. A. 4074) and T. D. 18950 (G. A. 4075) cited.

The dutiable value of raw sealskin furs purchased in England in 1899 and shipped to the United States in 1901 is the market value of such articles at the time of exportation, and it is error to include in such value interest on the amount paid therefor a year prior thereto.

Where raw furs are subjected to process of manufacture after such purchase and before importation it is proper to add on appraisalment the necessary cost of such manufacture and a reasonable profit within the limitations of section 11 of the administrative act.—T. D. 23558 (G. A. 5090).

St. Gall Embroideries—Appraiser's Return Can Not Be Reviewed on Protest.—When the appraisers resort to section 11, act of June 10, 1890, in order to ascertain the cost of production, this is conclusive of the fact that the market value of the merchandise could not be ascertained to their satisfaction under the provision of section 10.

The appraisers resorted to section 11, act of June 10, 1890, to ascertain the cost of production of St. Gall embroideries. The importer claimed that the appraisers could have ascertained the market value under section 10. *Held*, that the valuation returned by the appraisers could not be reviewed by protest.—T. D. 12996 (G. A., 1547).

Goods Subject to Specific Duties.—Manufacturer's statement of cost of production not required for goods subject to specific duties.—Dept. Order (T. D. 10300).

DECISIONS UNDER EARLIER STATUTES PERTAINING TO SAME SUBJECT MATTER.

Ascertainment of Market Value.—The dutiable market value of goods is to be determined by their general market value without regard to special advantages which the importer may enjoy, and in ascertaining that value it is proper in some instances to consider the cost of production, including such items of expense as designs, salary of buyer, clerk hire, rent, interest, and percentage on aggregate cost of the business.

In this case the appraisers evidently considered that the market value of the goods could be satisfactorily ascertained by the method which they pursued, and their determination, in the absence of fraud, can not be impeached by requiring them to disclose the reasons which impelled their conclusions or proving remarks made by them.

The valuation of imported merchandise by designated officials is conclusive, in the absence of fraud, when the official has power to make it.

In case of disagreement between the appraiser and the merchant appraiser in regard to the true market value of imported goods, the decision of the collector is final and fixes valuation.—*Muser v. Magone*, 155 U. S., 240.

Section 9 of the act of 1883 provides only for cases where articles made in a foreign country are not sold there, but are brought to the United States for sale.

This section does not require a determination as to the cost of each specific bale or cask or bag of goods. It requires only a determination, estimation, or ascertainment of what the value of the goods of the kind imported was in the places whence they came at the time of exportation.

In ascertaining the expense of manufacturing there must be included not only the expense of the various processes of manufacture but also general expenses, such as interest on capital invested, cost of insurance, salaries of employees, etc.

In determining the value of goods "profit" should be considered as an element of value only so far as it enters into the selling price of the goods in the markets of the foreign country from which they were imported.

The findings of a reappraising board as to the value of imported merchandise is final and conclusive and can not be reviewed by the courts.—*Muser v. Magone* (C. C.), 41 Fed. Rep., 877.

1913 Section 28, subsection 12, Act of 1909, continued in force by the Act of 1913, section 4, paragraph 5.

SEC. 28, SUBSEC. 12. That there shall be appointed by the President, by and with the advice and consent of the Senate, nine general appraisers of merchandise. Not more than five of such general appraisers shall be appointed from the same political party. They shall not be engaged in any other business, avocation, or employment. That the office of said general appraisers shall be at the port of New York, and three of them shall be on duty at that port daily as a board of general appraisers.

All of the general appraisers of merchandise heretofore or hereafter appointed under the authority of said Act shall hold their office during good behavior, but may, after due hearing, be removed by the President for the following causes, and no other: Neglect of duty, malfeasance in office, or inefficiency.

That hereafter the salary of each of the general appraisers of merchandise shall be at the rate of \$9,000 per annum.

That the boards of general appraisers and the members thereof shall have and possess all the powers of a circuit court of the United States in preserving order, compelling the attendance of witnesses, and the production of evidence, and in punishing for contempt.

All notices in writing to collectors of dissatisfaction of any decision thereof, as to the rate or amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), with the invoice and all papers and exhibits, shall be forwarded to the board of nine general appraisers of merchandise at New York to be by rule thereof assigned for hearing or determination, or both. The President of the United States shall designate one of the board of nine general appraisers of merchandise as president of said board and others in order to act in his absence. Said general appraisers of merchandise shall be divided into three boards of three members each, to be denominated respectively Board 1, Board 2, and Board 3. The president of the board shall assign three general appraisers to each of said boards and shall designate one member of each of said boards as chairman thereof, and such assignment or designation may be by him changed from time to time, and he may assign or designate all boards of three general appraisers where it is now or heretofore was provided by law that such might be assigned or designated by the Secretary of the Treasury. The president of the board shall be competent to sit as a member of any board, or assign one or two other members thereto, in the absence or inability of any one or two members of such board. Each of the boards of three general appraisers, or a majority thereof, shall have full power to hear and determine all cases and questions arising therein or assigned thereto; and the general board of nine general appraisers, each of the boards of three general appraisers, and each of the general appraisers of merchandise shall have all the jurisdiction and powers and procede as now, heretofore, and herein provided. The said board of nine general appraisers shall have power to establish from time to time such rules of evidence, practice, and procedure, not inconsistent with the statutes, as may be deemed necessary for the conduct and uniformity of its proceedings and decisions and the proceedings and decisions of the boards of three thereof; and for the production, care, and custody of samples and records of said board. The president of the board shall have control of the fiscal affairs and the clerical force of the board, make all recommendations for appointment, promotion, and otherwise affecting said clerical force; he may at any time before trial under the rules of said board assign or reassign any case for hearing, determination, or both, and shall designate a general appraiser or a board of general appraisers, and, if necessary, a clerk thereto, to proceed to any port within the jurisdiction of the United States for the purpose of hearing, or determining if authorized by law, causes assigned for hearing at such port, and shall cause to be prepared and duly promulgated dockets therefor. No member of any of said boards shall sit to hear or decide any case on appeal in the decision of which he may have previously participated. The board of three general appraisers, or a majority of them, who decided the case, may, upon motion of either party made within thirty days next after their decision, grant a rehearing or retrial of said case when in their opinion the ends of justice may require it.

Sec. 3. That said Act be, and the same is hereby, further amended by adding thereto, after said section thirty thereof, a new section to read as follows:

1908 "Sec. 31. That all of the general appraisers of merchandise heretofore or hereafter appointed under the authority of said Act shall hold their office during good behavior, but may, after due hearing, be removed by the President for the following causes, and no other: Neglect of duty, malfeasance in office, or inefficiency.

"That hereafter the salary of each of the general appraisers of merchandise shall be at the rate of \$9,000 per annum.

"That the said boards of general appraisers and the members thereof shall have and possess all the powers of a circuit court of the United States in preserving order, compelling the attendance of witnesses, and the production of evidence, and in punishing for contempt.

1890 Sec. 12. That there shall be appointed by the President, by and with the advice and consent of the Senate, nine general appraisers of merchandise, each of whom shall receive a salary of \$7,000 a year. Not more than five of such general appraisers shall be appointed from the same political party. They shall not be engaged in any other business, avocation, or employment, and may be removed from office at any time by the President for inefficiency, neglect of duty, or malfeasance in office. They shall be employed at such ports and within such territorial limits, as the Secretary of the Treasury may from time to time prescribe, and are hereby authorized to exercise the powers and duties devolved upon them by this Act and to exercise, under the general direction of the Secretary of the Treasury, such other supervision over appraisements and classifications, for duty, of imported merchandise as may be needful to secure lawful and uniform appraisements and classifications at the several ports. Three of the general appraisers shall be on duty as a board of general appraisers daily (except Sunday and legal holidays) at the port of New York, during the business hours prescribed by the Secretary of the Treasury, at which port a place for samples shall be provided, under such rules and regulations as the Secretary of the Treasury may from time to time prescribe, which shall include rules as to the classes of articles to be deposited, the time of their retention, and as to their disposition, which place of samples shall be under the immediate control and direction of the board of general appraisers on duty at said port.

DECISIONS UNDER THE ACT OF 1913.

Rehearing—Discretion of Board to Grant.—The denial by the board of a rehearing to permit the introduction of the record of another case involving similar or identical merchandise, this motion having been denied "for the present" at the hearing of the cause, and no further mention of it appearing in the record until after the publication of the board's decision, the record in this court showing with reasonable certainty the character and uses of the merchandise at bar, is not an abuse of the discretion vested in it by section 12, customs administrative law, permitting it to grant a rehearing "when in their opinion the ends of justice may require it," and rule 34 of its own rules of procedure, permitting the introduction of such record "within the discretion of the board."—*Semon Bache & Co. v. U. S. (Ct. Cust. Appls.)*, T. D. 36128; *G. A. Ab. 37674* affirmed.

Jurisdiction of the Board.—Where classification has been made by the department under a certain paragraph levying a 25 per cent rate of duty, and, at the instance of a domestic manufacturer, the classification of a particular shipment imported by him has also been made at a higher rate "to the end that the proper classification may be the subject of a judicial determination," and where, at the trial, both the attorney for the Government and for the protestant favor the classification at a higher rate, such a case does not arise as to properly invoke the jurisdiction of this board under the provisions of the

customs administrative act of 1890, as amended by the act of October 3, 1913, and the protest must be dismissed.—T. D. 35561 (G. A. 7744).

Board of General Appraisers Has No Expert Knowledge.—A porcelain miniature of Marie Antoinette, classed as decorated porcelains under paragraph 80, tariff act of 1913, was claimed dutiable as works of art (par. 376). The case was submitted on sample without testimony. Protest overruled for the reason that the board has no expert knowledge and decides all cases upon the testimony before it. G. A. 3219 (T. D. 16430) cited.—Ab. 37977.

DECISIONS UNDER THE ACT OF 1909.

Finality of Board's Decision.

LEGAL STATUS OF BOARD OF UNITED STATES GENERAL APPRAISERS.—By subsection 12 of section 28, tariff act of 1909, the Board of United States General Appraisers, in the trial and determination of issues arising under the tariff law, is created a court in everything but name—a court of limited jurisdiction, but within that jurisdiction its powers are made as ample as those of the United States circuit court.

FINALITY OF BOARD'S DECISION.—The decisions of the Board of United States General Appraisers, in cases where it has jurisdiction of the subject matter and the persons, are not only final and conclusive, not only presumed to be correct, but are absolutely verity when the same have not been appealed from in the manner prescribed by law, and are to be treated as such in any collateral proceeding. *Voorhees et al. v. U. S. Bank* (10 Pet., 449). It must be presumed by every court that when the board renders a decision with reference to the classification of merchandise it does so upon ample proof and the conclusion reached must stand as the law and be accepted as such unless appealed from and reversed in the manner prescribed by law. *Hilton's Administrators v. Jones* (159 U. S., 584).

CREDENCE TO BE GIVEN THE BOARD'S DECISION.—By subsection 14 of section 28, tariff act of 1909, the decision of the Board of United States General Appraisers in classification cases, when acting within its jurisdiction, is made final and conclusive upon all persons interested, except in cases appealed to the United States Court of Customs Appeals in the manner provided by law.—T. D. 34666 (G. A. 7589).

Evidence.—The importers should not have been compelled to have their case adjudged on an incomplete record of evidence they sought rightly to complete; moreover, the board erred in considering records improperly received in evidence.—U. S. *v. Baiz & Co.* (Ct. Cust. Appls.), T. D. 34526; (G. A. Ab. 34182) T. D. 33963 remanded

Testimony of a Single Witness.—The testimony of a single witness unimpeached, whether or not corroborated by other circumstances in the case, may be held sufficient to sustain or reverse a judgment.

This witness's testimony did not disclose that the importations were of trimmed straw hats alone, and, in fact, the goods were invoiced as trimmed hats. Under the facts as appearing the board's decision will not be disturbed.—*Schmitt v. U. S.* (Ct. Cust. Appls.), T. D. 34523; (G. A. Ab. 33841) T. D. 33795 affirmed.

Sufficiency of the Record.—There was sufficient in the appraiser's reports or the collector's letters, taken together, upon which to predicate a finding of fact and so to bring the particular statute into operation. *Vandegrift v. U. S.* (3 Ct. Cust. Appls., 219; T. D. 32535).—*Abraham & Straus et al. v. U. S.* (Ct. Cust.

Appls.), T. D. 34522; (G. A. Ab. 33837) T. D. 33789 and (G. A. Ab. 33858) T. D. 33795 remanded.

Transfer of Cause From One Board to Another.—In this cause the only warrant that Board 1 had for deciding the question at issue was a so-called order of transfer made by the president of the Board of General Appraisers. This order was made after and not before trial, as prescribed by statute, and it conferred no authority on Board 1 to determine the issues involved in the protests. Moreover, as appears from the record, no opportunity was given, either to the Government or the importers, to appear and be heard.—U. S. *v.* Saunders et al. (Ct. Cust. Appls.), T. D. 34446; (G. A. Ab. 34156) T. D. 33934 reversed.

Evidence in One Case Employed to Determine Another.—The testimony relied upon as taken in a former case should have been, after due notice, ordered into the record here. Failure to do this was a substantial irregularity, since it deprived Government's counsel of the opportunity to present opposing testimony. U. S. *v.* Lun Chong (3 Ct. Cust. Appls., 468; T. D. 33041).—U. S. *v.* Quong Chun & Co. (Ct. Cust. Appls.), T. D. 34326; (G. A. Ab. 33806) T. D. 33789 reversed.

Deposition Excluded.

POWER TO EXCLUDE DEPOSITION.—A witness having refused to answer certain cross-interrogatories upon which, together with direct interrogatories, a deposition was taken under a commission issued by the Board of United States General Appraisers to show the component material of chief value in certain gloves assessed for duty as being composed in chief value of silk and claimed to be composed in chief value of cotton, the questions which the witness refused to answer being material and important to the issue, and counsel for the Government having objected to the admission of the commission in evidence, *Held*, that the board had power to exclude the deposition from the record.

RULE XXV OF THE BOARD OF UNITED STATES GENERAL APPRAISERS.—Rule XXV of this board, relating to the issuing of commissions to take depositions, does not preclude the board from passing upon the admissibility of the deposition.

INTERLOCUTORY ORDERS.—When a deposition taken under a commission issued by the board was returned and offered in evidence, counsel for the Government objected to its introduction on the ground that the witness refused to answer certain cross-interrogatories. Counsel for the importers thereupon requested that an interlocutory order be entered that he might "take an appeal on the question of evidence," and the board refused to grant the order for the reason that only final decisions of the board are reviewable by the Court of Customs Appeals. Subsection 29 of section 28, tariff act of 1909, and *Stegeman v. U. S.* (1 Ct. Cust. Appls., 208; T. D. 31240).—T. D. 33912 (G. A. 7508).

Evidence.—From the testimony the analysis made by the chemist employed by the appellees must be assumed correct; and there is no proof to the effect that castor oil may have been used in the manufacture of the alizarin assistant which would not be revealed by the analysis. As the oil contained less than 50 per cent of castor oil, it was dutiable under paragraph 32, tariff act of 1909.—U. S. *v.* Koons, Wilson & Co. (Ct. Cust. Appls.), T. D. 33877; (G. A. Ab. 31810) T. D. 33304 affirmed.

On the hearing, neither the official chemist who made the analysis nor the official examiner who drew the sample, or had it drawn under his direction, could identify the official sample.

The failure to connect the Government's sample with the importation, when considered against the apparent regularity of the selection of the importer's sample and the analyses thereof, warrants the conclusion that the latter should be accepted as against the former.—Ab. 31810 (T. D. 33304).

Hearing by One Board, Determination by Another.—The powers and duties of the board of appraisers and the law affecting these are stated and discussed. The record in this case shows there was a hearing by Board 1, to whom the case had been lawfully committed for hearing and determination and the jurisdiction of which is not challenged. The decision here complained of, however, was rendered by another board, having no appellate jurisdiction over Board 1 and the assumed jurisdiction of which is directly challenged. The judgment of the second board is void and the case is still pending before Board 1 for determination and decision.—*U. S. v. Park & Tilford* (Ct. Cust. Appls.), T. D. 33514; (G. A. Ab. 29824) T. D. 32830 reversed and remanded.

Ex Parte Affidavit.—On the hearing before the board no evidence was offered by the importers in aid of their protest save and except an ex parte affidavit. Under the circumstances the affidavit must be regarded as a declaration which could not be subjected to the test of cross-examination and which was therefore purely ex parte. *U. S. v. Hoffman* (1 Ct. Cust. Appls., 276; T. D. 31319); *Strakosh v. U. S.* (ib., 360; T. D. 31453); *Acker v. U. S.* (ib., 404; T. D. 31481).—*U. S. v. Freese Co.* (Ct. Cust. Appls.), T. D. 33488; (G. A. Ab. 29162) T. D. 32681 reversed.

"Amended Decision."—At an earlier stage of this litigation an application for a rehearing was filed and the board, responding to this without a hearing, directed, by a letter there termed "an amended decision," that the matter, omission of which had been urged as a ground for granting a rehearing, should be incorporated in the formal decision of the case. The application for a rehearing being thereupon withdrawn, the protestant could not be later heard in objection to the proceeding as irregular.—*King Collar Button Co. v. U. S.* (3 Ct. Cust. Appls., 174; T. D. 32461).

The law contemplates that the true amount or rate of duty should be paid on imported merchandise and nothing more. There is a doubt here, however, whether the proper method of measuring the merchandise of the importation was employed. The appeal was seasonably taken and a further hearing in the circumstances is reasonably required.—*King Collar Button Co. v. U. S.* (Ct. Cust. Appls.); (Ab. 26448) T. D. 31845 reversed. Note T. D. 32461, *infra*.

Motion to Strike.—On an application for a rehearing being filed but not heard, the board, responding to the application by a letter termed an "amended decision," directed the incorporation in the formal decision of the matter the omission of which was complained of in the petition for a rehearing. Thereupon, on the faith of this "amended decision," the application for a rehearing was withdrawn. Whatever irregularity there may have been in the course pursued by the board, it was no more than an irregularity, and the waiver of this by appellant is manifest.—*King Collar Button Co. v. U. S.* (Ct. Cust. Appls.), T. D. 32461; (G. A. Ab. 26448) T. D. 31845, motion denied.

Record in Another Case as Evidence—Stare Decisis.—The mere citation of a previous decision of the board does not, in the absence of any offer anew of the record in the former case, establish that the facts are the same in each. *U. S. v. Oberle* (1 Ct. Cust. Appls., 527; T. D. 31545). Nor can the former case on such bare citation be held stare decisis.

The only evidence here going to sustain the board's finding consists of the samples, unsupported by any testimony that the leather, which is the component material of chief value, is leather made from the hides of cattle of the bovine species. This in itself is insufficient. *Shallus v. U. S.* (3 Ct. Cust. Appls., —; T. D. 32347).—*U. S. v. Lun Chong & Co. et al.* (Ct. Cust. Appls.), T. D. 33041; (G. A. Ab. 28609) T. D. 32560 remanded.

Subpœna Duces Tecum.

POWER OF GENERAL APPRAISERS.—The Board of General Appraisers has power under subsection 12, section 28, tariff act of 1909, to issue a subpœna duces tecum for the Secretary of the Treasury directing him to produce papers in his possession at a hearing before a general appraiser.

CONFIDENTIAL REPORTS.—The statement on the part of the Secretary of the Treasury that a report in his possession is of a confidential nature and against public policy to disclose is a complete answer to a subpœna duces tecum. This is a question which he alone must determine, and his determination is binding upon this board and the courts.—T. D. 32925 (G. A. 7401).

Rehearing by Board.

STATEMENT.—The cause was originally docketed in San Francisco. In New York, on December 13, 1911, a previous order of August 21 denying a rehearing was vacated and set aside by the board, a rehearing granted, and the board, without giving notice of its proceedings to the parties at interest or a motion therefor, reconsidered the case and gave judgment, duly entered, sustaining the protest.

NOTICE.—There was error in the failure to give notice to counsel for the Government or to any of the parties of the final hearing and determination of the case.

DOCKETING A CAUSE.—Under the rules of the board both the importer and the Government had a right to expect the case would be duly docketed at the port of San Francisco at the next regular hearing. The board was without authority to set the case for a rehearing on a regular trial day, even at the port of New York.—U. S. v. Rothschild & Co. (Ct. Cust. Appls.), T. D. 32566; (G. A. Ab. 26189) T. D. 31774 and (G. A. Ab. 27386) T. D. 32089 reversed.

Rehearing—Redecision.—The order heretofore made, dated August 21, 1911, Ab. 26442 (T. D. 31842), denying a rehearing, is hereby set aside and annulled and a rehearing is hereby granted.

It appearing also to the satisfaction of the board, from an examination of the record and the papers filed therewith, that the protest should have been sustained, the same is hereby sustained and the collector directed to reliquidate the entry assessing duty on the blanco in question under paragraph 7 of the tariff act of 1909.—Ab. 27386 (T. D. 32089).

A Certificate Admitted "For What It Is Worth."

INCOMPETENT EVIDENCE.—The board admitted in evidence a certain certificate "for what it is worth." Without determining whether this was equivalent to holding the certificate had probative force of some sort, it is clear that subsection 29 of section 28, tariff act of 1909, relating to the powers of this court does not exempt testimony admitted by the board from the application on its review here of accepted principles governing the competency of evidence; and it is not true that if through error the board has admitted and considered as evidence that which has no tendency to support an issue of fact, such error, aided by the statute, imparts a character and force to that evidence which under no other circumstances could it possess; the word "competent" in the law, as applied to evidence before this court on appeal, does not clothe testimony improperly admitted below with any new quality or give it a probative force never inherently possessed by it. Knauth, Nachod & Kuhne (155 Fed. Rep., 144) distinguished.

UNATTESTED DECLARATION ABROAD.—An unsworn ex parte statement made abroad and deposited with a vice consul is in no sense the equivalent of a deposition under oath and taken where there was an opportunity to cross-examine the witness; and such a statement can not be held to overcome the

presumption of correctness in a collector's classification; especially is this so when such ex parte statement lacks relevancy.

MOTION TO REMAND.—Under the circumstances and upon request therefor, the rule is applied that a cause may be remanded for a new trial when necessary for the purposes of justice.—*U. S. v. National Aniline & Chemical Co. (Ct. Cust. Appls.)*, T. D. 32287; (*G. A. Ab. 24002*) T. D. 30944 remanded.

Petition for Rehearing and Time Limitations on Appeals.—Where a motion for a new trial has been entered within the time fixed by law, the limitation of 60 days within which it is permitted to take an appeal begins to run not from the date of the original decision, but from the date the motion for a new trial is disposed of.—*U. S. v. Vandegrift & Co. (Ct. Cust. Appls.)*, T. D. 32197.

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Board's Mandate.—On reliquidation the collector disregarded the mandate of the board. The board had made an attempt by its order to segregate the cases in which the artificial horsehair covered by its decision was contained, and it is clear it was intended to decide that the cases named contained artificial horsehair.—*U. S. v. Eckstein (Ct. Cust. Appls.)*, T. D. 34524; (*G. A. 7516*) T. D. 33982 affirmed.

Hearings by Board of General Appraisers.

SUBSTITUTION OF RECORDS ON HEARING BEFORE BOARD.—Where a rule had been promulgated by the Board of General Appraisers providing that in classification proceedings the record and testimony in one case might be admitted as the record and testimony in another, if a like case, but providing, too, for a reexamination and cross-examination of witnesses if moved for, proceedings on such a substituted record could only be proper after due notice, so that witnesses might be reexamined or cross-examined as might or might not be desired.

REVIEW OF QUESTIONS OF FACT.—This court may review questions of fact, but when a decision by a board is made to rest on a record that is not a part of the record here, there is not here sufficient testimony to warrant the finding of the board being sustained.—*U. S. v. Oberle (Ct. Cust. Appls.)*, T. D. 31545; (*G. A. Ab. 23092*) T. D. 30547 reversed.

Power of Board of Appraisers to Review Facts.—The power of a Board of General Appraisers to review on appeal a finding of facts is not limited in its exercise to cases where new and additional facts or exhibits are there submitted, but embraces the case in its entirety, with or without new and additional facts or exhibits appearing; and so the finding of a collector is not conclusive against an importer when, on appeal to a Board of General Appraisers, precisely the same case is there presented for decision that was presented at the port of entry.

The Board of General Appraisers having found the gloves in this consignment were not embroidered with more than three single strands or cords, and the Government relying here solely on a contention that the board exceeded its authority in not adhering to a different finding by the collector, the board on the contrary possessing the authority so denied, its finding is affirmed.—*U. S. v. Perkins, Van Bergen & Co. (Ct. Cust. Appls.)*, T. D. 31430; (*Ab. 22027*) T. D. 30086 affirmed.

Rehearing—Lack of Ground for Motion.—In the absence of a statute regulating procedure on an application for a rehearing, failure of counsel sufficiently to present a cause affords ordinarily no ground on which such an application could be based.

It does not appear in this case that the decision as rendered was in conflict with an express statute or with a controlling decision to which the attention of the court had not been directed.—*Lunham & Moore v. U. S. (Ct. Cust. Appls.)*, T. D. 31409.

Power of Board of General Appraisers to Issue Commissions to Take Testimony.—Without considering the judicial nature of the Board of United States General Appraisers or the power that might be found to inhere in the board as a tribunal to issue commissions to take testimony, it would plainly appear that the statute under the authority of which it was established empowers the board to issue such a commission, and that a rule adopted by the board empowering one of its members to issue such a commission is well within the scope of the board's authority.—*U. S. v. Hoffman-La Roche Chemical Works (Ct. Cust. Appls.)*, T. D. 31319; T. D. 30547 affirmed.

Rehearing—Premature Appeal.—The Board of General Appraisers granted an application for rehearing on the same date that an appeal from its original decision was taken to the circuit court, these proceedings being brought under the provisions of sections 1 and 2, act of May 27, 1908 (35 Stat., 403). *Held*, that by reason of the allowance of the rehearing the appeal was premature and should be dismissed.—*U. S. v. Gallagher (C. C.)*, T. D. 30365.

Rehearing in Case in Which Appeal Is Also Taken.—Where the Board of General Appraisers grants a rehearing and at the same time an appeal is taken to the circuit court and the appeal is not discontinued, the Board of General Appraisers should not dismiss the rehearing proceedings, but should request permission of the circuit court to retain the papers and proceed on rehearing. *Kingman v. Western Manufacturing Co.* (170 U. S., 675) and *Roemer v. Simon* (91 U. S., 149).—T. D. 30110 (G. A. 6940).

Evidence on Appeal.

An importer did not appear at the hearing in his case before the Board of General Appraisers because he did not receive notice of the hearing, but the failure of the notice to reach him was because of his neglect. *Held*, that he might not introduce evidence in support of his contention, on appeal to the circuit court under section 15, customs administrative act of 1890.—*Maurer v. U. S. (C. C.)*, T. D. 28636.—*Note Mendelson v. U. S. (C. C. A.)*, T. D. 27898; T. D. 27088 reversed.

FURTHER EVIDENCE.—On appeal to the circuit court from the Board of General Appraisers, the importers may not, under section 15, customs administrative act of 1890, introduce evidence as to items of their merchandise with respect to which no evidence was offered at the hearing before the board.—*Plummer v. U. S. (C. C.)*, T. D. 28635.—*See Bromley v. U. S. (C. C.)*, T. D. 28051, and *Allen v. U. S. (C. C.)*, T. D. 25052.

FAILURE TO INTRODUCE EVIDENCE BEFORE GENERAL APPRAISERS.—An importer appeared before the Board of General Appraisers and submitted his case on the record and the official sample, without introducing any evidence in support of his contention. *Held*, that evidence as to the circumstances connected with this submission was admissible in the circuit court on appeal from the board, but that evidence on the merits of the main question was inadmissible.—*Crawford v. U. S. (C. C.)*, T. D. 28539.—*See Lehigh Manufacturing Co. v. U. S. (C. C.)*, T. D. 28055.

FINDING OF GENERAL APPRAISERS.—Findings of the Board of General Appraisers will not be disturbed by the courts on appeal unless they are unsupported or are against the weight of evidence, or there is additional evidence before the court.

The classification by a collector of customs of imported merchandise for tariff purposes is presumably correct.—*Vandiver v. U. S. (C. C. A.)*, T. D. 28521; affirming T. D. 27917 (C. C.) and (Ab. 11977) T. D. 27458.

Jurisdiction of General Appraisers.

SURRENDER OF JURISDICTION.—When one of the Boards of three General Appraisers authorized by section 12, customs administrative act of 1890, has duly acquired jurisdiction over a case, as provided in section 14 of said act, it is its duty to "examine and decide the case thus submitted" as provided in the latter section; and it may not legally surrender its jurisdiction to another board in order to comply with a rule of the general appraisers for preventing conflicting decisions.

A case had duly come within the jurisdiction of a Board of three General Appraisers, under section 14, customs administrative act of 1890, and that board had held hearings and had prepared and signed, but not promulgated, a decision. Then, under a rule of the general appraisers for preventing conflicting decisions, the case was transferred to another board. *Held*, that this was illegal, that the latter board had no jurisdiction, and that its decision should be vacated.

SAME—FAILURE TO ACT—MANDAMUS.—Should a Board of General Appraisers refuse to "examine and decide" a case over which it had jurisdiction, as provided in section 14, customs administrative act of 1890, the proper court could be applied to for a mandamus to require the exercise of such jurisdiction.—*Prosser v. U. S. (C. C. A.)*, T. D. 28603.

Petition for Review of Decision of General Appraisers.—An importer in applying for review of a decision of the Board of General Appraisers, under section 15, customs administrative act of 1890, failed to specify in his assignment of errors the provision of law under which his goods should have been classified. *Held*, that the petition did not meet the requirement of said section of containing "a concise statement of the errors of law and fact complained of."

An importer in his petition for review of a decision of the Board of General Appraisers, under section 15, customs administrative act of 1890, made several specific assignments of error and a general assignment that "the protest should be sustained and the collector's decision reversed," but failed to refer to the provision under which his merchandise should have been classified. *Held*, that this omission was not remedied by the fact that the correct contention had been made in his protest passed on by the board, nor by making said general assignment.

Assignments of error can not be amended in a case pending in the circuit court on review of a decision of the Board of General Appraisers, in which the period has expired for taking further evidence under section 15, customs administrative act of 1890.—*Vandegrift v. U. S. (C. C.)*, T. D. 28209.

Evidence—Ex Parte Affidavits.—Under the customs administrative act of 1890 there is no provision for any relaxation of the ordinary rules of evidence in taking evidence by general appraisers; and ex parte affidavits are not admissible before a general appraiser taking further evidence in the circuit court under section 15 of said act.—*White v. U. S. (C. C.)*, T. D. 28147.

NOTE.—No appeal was taken from this decision. For further authorities on this question see *Mendelson v. U. S. (T. D. 27898)*, in which the Circuit Court of Appeals, Second Circuit, held that an ex parte affidavit made by a person in a foreign country was evidence within the meaning of section 15 of the customs administrative act of 1890; also *U. S. v. Downing* (146 Fed. Rep., 56, 60; T. D. 27025), in which the same court gave controlling weight to a sworn statement by the manufacturer or shipper, which accompanied the goods.

By reference to the printed records in these cases it appears that at the hearings before the Board of General Appraisers there was no objection to the introduction of the affidavit in the Mendelson case, but that in the Downing case the board admitted the shippers' statement over the objection of consul for the Government. Note, also, *U. S. v. Hempstead* (T. D. 28076), in which the Circuit Court for the Eastern District of Pennsylvania held that a report by a Government officer was incompetent because ex parte, not under oath and not subject to cross-examination. In this case the report was procured and admitted by the board on its own motion without notice to counsel on either side.

Doubtful Question of Fact—Presumption in Favor of Classification.—*Held*, that the classification of merchandise for the purpose of assessing duty should not be disturbed on the basis of evidence that the officer making the classification was inclined to the opinion that he had erred in finding the component material, yet, in the absence of an analysis of the goods, was not certain that he had erred.—*Thorpe v. U. S. (C. C.)*, T. D. 28146.

Evidence—Official Reports.—A report by a chemist in the Customs Service, referring to merchandise the subject of a case pending before the Board of General Appraisers, *Held*, incompetent because ex parte, not under oath and not subject to cross-examination.—*U. S. v. Hempstead (C. C.)*, T. D. 28076.

Undue Delay of Collector in Forwarding Protest.—Through misunderstanding the collector failed to forward to the Board of General Appraisers a protest relating to a certain importation of sugar until several years after the protest was filed. In the meantime the Government's samples had disappeared. The importer's samples were incomplete and their value as illustrating the color of the sugar had become impaired. The testimony offered by the importer not being sufficient in itself to show that the classification complained of was wrong, it was held that the failure of the customs officers to forward the protest without undue delay or to preserve the official samples did not constitute a sufficient reason for reversing the assessment of duty.—*Franklin Sugar Refining Co. v. U. S. (153 Fed. Rep., 653)*, T. D. 28056.

GENERAL APPRAISERS' FINDINGS OF FACT.—The record returned to the circuit court by the Board of General Appraisers for review under section 15, customs administrative act of 1890, was incomplete by reason of the loss of the evidence on which the board's findings were based, *Held*, that, under the circumstances and in the absence of other evidence, the findings of fact and conclusions of the board thereon must be presumed to have been proper and justifiable.

It was contended that so-called dead oil had been erroneously classified as a distilled oil, several cases being cited as authority which had sustained a similar contention with regard to an article known as dead oil; but there was no evidence that the substance was the same as that passed on in said cases. *Held*, that it would not be assumed, without evidence, that dead oil is always and everywhere either actually or commercially the same article, nor that it was the same as that covered by the cases cited.—*Schoellkopf v. U. S. (C. C.)*, T. D. 27638.

Evidence Without Production of Samples.—The character of imported merchandise may be shown by witnesses familiar with the goods, testifying from the invoice descriptions and without the production of actual samples of the importations.—*U. S. v. Herrmann (C. C. A.)*, T. D. 27981; affirming T. D. 27136.

Findings of General Appraisers—Reviewability.—The contention that the findings of fact by the Board of General Appraisers are not reviewable by the

courts on appeal under section 15, customs administrative act of 1890, *Held* not supported by the authorities, and to be especially without force with respect to a decision under review by a circuit court of appeals, on appeal from a decision of the circuit court reversing the board's findings. *Note Gullenkamp v. Wyman* (C. C.), T. D. 27651.

On appeal from a decision of the Board of General Appraisers, affirming the assessment of duty on imported merchandise, the circuit court reversed said decision, holding the merchandise subject to another classification. On appeal from the circuit court, the circuit court of appeals, determining the assessment to have been erroneous, *Held*, that the judgment of the circuit court should be affirmed without inquiring into its correctness.—U. S. *v. Proctor* (C. C. A.), T. D. 27115; affirming T. D. 26544 which reversed (G. A. 5333) T. D. 24395.

Review of General Appraisers' Decisions—Reversal of Findings of Fact.—*Held*, that, on review of a decision of the Board of General Appraisers, a finding of fact by the board should not be reversed where the evidence was such that, if the finding had been made by a jury instead of the board, the verdict would not have been set aside as not warranted by the evidence.—*Ralli v. U. S.* (C. C.), T. D. 26821; affirming (G. A. 849) T. D. 11858.

Protests Unsupported by Evidence.

EVIDENCE.—It is incumbent upon importers to offer evidence in support of the claims made in their protests at the hearings in their cases before the Board of General Appraisers, the words "further evidence" contained in section 15 of the administrative act of June 10, 1890, having been judicially held to mean evidence in addition to that previously submitted to the board.

ESTOPPEL.—Importers who have failed, after due notice, to introduce evidence in support of their contentions in protest cases before the board, are estopped from the introduction of such evidence before a higher tribunal in appeal from decisions of the board wherein the appellants have been defaulted on the ground of nonappearance, the latter being, constructively, an abandonment of their protests. See *U. S. v. China & Japan Trading Co.* (71 Fed. Rep., 864) and *Donat v. U. S.* (124 Fed. Rep., 463).—T. D. 26614 (G. A. 6117).

Evidence—Finding of General Appraisers.—An informal acknowledgment made by a merchant in a foreign country held insufficient to overthrow a finding of the Board of General Appraisers based on legitimate evidence.—*Baldwin v. U. S.* (C. C.), T. D. 26453.

Evidence—Findings of Collectors of Customs—Reviewability.—On review of a decision of a collector of customs as to the classification of imported merchandise, where it does not appear that any testimony was produced before him, his findings of fact may be reversed by the Board of General Appraisers or the courts without any additional evidence. The collector, the board, and the courts are all equally entitled to avail themselves of such information as may be derived from an inspection of the articles in connection with the facts of common knowledge and experience of which judicial notice may be taken.

In determining the question whether or not ping-pong balls are articles for the amusement of children, or "toys," the court will take judicial notice that the game of ping-pong is ordinarily played on a table which is of such height that it would be difficult for children to play the game; that it is indulged in by adults and requires a degree of skill not ordinarily possessed by children, and that ping-pong balls are sold in stores where athletic goods which are not toys are dealt in.—*U. S. v. Strauss* (C. C. A.), T. D. 25995.

Findings of Board of General Appraisers—Review by Courts.—Though findings of fact made by the Board of General Appraisers upon conflicting evidence will not as a rule be reviewed by the courts, an exception is made in

a case where the decision is made by general appraisers who did not hear the evidence, all of which was taken before another general appraiser who did not sign the opinion.—*Neresheimer v. U. S. (C. C. A.)*, T. D. 25876.

Appeals from General Appraisers.

BOARD OF GENERAL APPRAISERS—JURISDICTION.—The Board of General Appraisers, under the authority given in section 14, customs administrative act of June 10, 1890, to "examine and decide the case" submitted to it by a collector of customs, is required first of all to determine its jurisdiction over the case.

APPEAL—GENERAL ASSIGNMENTS OF ERROR.—On an appeal from a decision of the Board of General Appraisers, 21 assignments of error were stated, 19 relating to the merits of the case, while the last 2 were general in terms, alleging only that the "board erred as a matter of law," etc. *Held*, that these 2 assignments should be construed with reference to the errors asserted in the preceding 19, and not as raising the unrelated question of the validity of the protest on which the proceedings before the board were based. *Held*, also, that assignments so general in form are not in compliance with the requirements for appeals under section 15, customs administrative act of June 10, 1890, prescribing that they consist of "a concise statement of the errors of law and fact complained of."

WAIVER OF DEFECTS IN PROTEST.—On appeal by the United States from a decision of the Board of General Appraisers, which reversed the assessment of duty by a collector of customs, no assignment of error was made by the appellant in regard to the sufficiency of the protest on which the proceedings before said board were based, but the collector had, in transmitting the protest to the board, alleged that it did not fulfill the requirements of section 15, customs administrative act of June 10, 1890. *Held*, that the failure to raise this issue by an assignment of error on appeal to the circuit court constituted a waiver by the United States of the alleged defect in the protest, and that the court could not in that case properly consider the question whether the board had jurisdiction to decide the protest on its merits.—*U. S. v. Brown (C. C. A.)*, T. D. 25074; affirming 121 Fed. Rep., 605.

ASSIGNMENTS OF ERRORS.—Certain merchandise was claimed by the importers either to be free of duty or subject to duty at a less rate than that assessed; and the former contention was sustained by the Board of General Appraisers. The Government appealed under section 15, customs administrative act of 1890, assigning as error the board's conclusion that the merchandise was free. *Held*, that the merchandise might be held dutiable at the rate alternatively contended for by the importers, regardless of the fact that the assignment of errors did not more specifically suggest that classification.—*U. S. v. Hatters' Fur Exchange (C. C.)*, T. D. 27971.

Finality of Board Decisions—Illegal Reliquidation.—The decision of the board of classification as to the issues raised by a protest is "final and conclusive," except when an application for review is made in the manner provided by section 15, act of June 10, 1890 (26 U. S. Stat., p. 131); and the action of a collector of customs in assuming to reliquidate an entry otherwise than in accordance with the mandate of the board, no appeal having been taken from the board's decision, is null and void.—T. D. 24459 (*G. A.* 5346).

Decision of Board Founded on Evidence Taken in Other Cases and Common Knowledge.—On a review of the decision of the Board of General Appraisers a motion to strike out testimony taken before the board will be denied, although the record, as certified, states the facts were found "from evidence

and common knowledge" and included evidence taken in other cases in which the importers were not concerned and had had no opportunity to answer or controvert the same.

It is clearly the intention of the act of June 10, 1890, as shown by the proceedings in Congress leading to its passage, that the Board of General Appraisers shall possess expert knowledge of their own and that their decision should be based upon such knowledge and evidence submitted or upon no evidence at all or in the absence of the importer and his witnesses.

All evidence taken before the Board of General Appraisers is competent before the circuit court on review, but the importer is then entitled to controvert it under the ordinary rules of evidence.—*In re Muser* (C. C.), 49 Fed. Rep., 831.

Decision of Board Not Supported by Evidence.—Where a finding of the Board of General Appraisers is wholly without evidence to support it the court will disregard it.—*Morris European & American Express Co. v. U. S.* (C. C.), 94 Fed. Rep., 643.

The court will not interfere with findings of fact by the Board of General Appraisers unless they are unsupported by proof or clearly against the weight of evidence.—*Page v. U. S.*, 113 Fed. Rep., 1006.

A finding by the Board of General Appraisers not sustained by sufficient proof will be disregarded by the court.—*Boussod, Valedon Co. v. U. S.* (C. C.), 66 Fed. Rep., 718.

Decision of Board Sustained by Evidence.—There being ample evidence to sustain a finding of the Board of General Appraisers as to a question of fact, the court refused to disturb it.—*U. S. v. Jackson*, 113 Fed. Rep., 1000.

The court will not disturb a finding of the Board of General Appraisers on a question of fact where there is evidence to sustain it.—*Leerburger v. U. S.*, 113 Fed. Rep., 976.

The court will not disturb the findings of fact of the Board of General Appraisers as to the nature of goods, even if against the weight of evidence, where the Board has sufficient evidence to warrant their findings.—*In re Bing*, 66 Fed. Rep., 727.

A finding upon a question of fact by the Board of General Appraisers in the absence of any further or different testimony than that returned to the court by the board will not be disturbed, but will be affirmed by the circuit court.—*In re Kursheedt Manufacturing Co.* (C. C.), 49 Fed. Rep., 633.

The decision of the Board of Appraisers on evidence produced before it in respect to a question of fact, such as whether a given substance (natural gas) is or is not a mineral (par. 651, act of 1890), should not be disturbed by the court if fairly sustained by the evidence, even if the court were inclined to a different opinion.—*In re Buffalo Natural Gas Fuel Co.* (C. C.), 73 Fed. Rep., 199.

Evidence Before Board.—Findings of fact by the Board of General Appraisers, based upon conflicting testimony as to the commercial designation of an article, can not be reviewed by the courts.—*Belcher v. U. S.* (C. C.), 91 Fed. Rep., 975.

A decision of the Board of General Appraisers of a question of fact involved in great conflict of testimony, which is affirmed by the circuit court upon a like conflict of testimony, should not be disturbed by the circuit court of appeals.—*White v. U. S.* (C. C. A.), 72 Fed. Rep., 251.

Where upon a conflict of evidence before the Board of General Appraisers, arising chiefly upon the commercial meaning of the term "marble" (par. 123, act of 1890), there is sufficient proof to sustain their findings, such findings will not be disturbed.

The fact that the return was not signed by the members who took the evidence does not overcome the presumption that the appraisers who heard the case decided it.—*Mexican Onyx & Trading Co. v. U. S. (C. C.)*, 66 Fed. Rep., 732.

When testimony as to commercial designation is not only conflicting but so closely balanced as to make it difficult to say on which side lies the weight of evidence the finding of the Board of General Appraisers will not be disturbed.—*Gabriel v. U. S.*, 123 Fed. Rep., 296.

The decisions of the Board of General Appraisers on disputed evidence as to the facts will not be disturbed by the court.—*In re White (C. C.)*, 53 Fed. Rep., 787.

The circuit court of appeals will not review a finding of facts by the Board of General Appraisers, not controverted by new evidence in the circuit court, unless manifestly unsupported by the evidence or clearly against its weight.—*Apgar v. U. S. (C. C. A.)*, 78 Fed. Rep., 332.

Failure of Importers to Offer Evidence.—The decision of the Board of General Appraisers will be affirmed if, after due notice, the importers failed to appear and offer evidence before the board.—*Donat v. U. S.*, 124 Fed. Rep., 463.

The decision of the Board of General Appraisers will not be disturbed when the only evidence placed before them by the importer consisted of two affidavits which they apparently did not accept and no evidence was taken upon the appeal.—*Bailey v. U. S.*, 122 Fed. Rep., 751.

Insufficient Return of Board.—A return of the Board of General Appraisers in which the only fact certified is that "silk is the component material of chief value" is insufficient and will be sent back for a further description of the articles.—*In re Dieckerhoff (C. C.)*, 45 Fed. Rep., 235.

The return of the Board of General Appraisers stated that all the facts involved in the case were contained in its annexed opinion and decision, but the opinion merely confirmed the collector's assessment of duty, stating that for certain reasons "it was not deemed advisable to enter into the merits" of the question involved in the protest. *Held*, that the return is not sufficient and it should be sent back to the board to be conformed to the requirements of section 15, act of June 10, 1890.—*In re Blumlein*; *In re Rosenwald*; *In re Cullmans*; *In re Schubart*, 45 Fed. Rep., 236.

The collector assessed a duty of 100 per cent on coverings for pipes, cigar holders, opera glasses, and mathematical instruments, as being designed to evade duties thereon. The importers protested that they were usual and necessary coverings of such articles and, as such, free, or else that they should pay duty according to certain enumerations mentioned in the protest. The board sustained the collector. The only facts certified in the return to the circuit court were that the coverings were entered free and that the protests were rejected as not being sufficiently specific. *Held*, that the return would be sent back as not being a "certified statement of the facts involved in the case."—*In re Downing*; *In re Demuth*; *In re Kaufman*; *In re Zimmern (C. C.)*, 45 Fed. Rep., 412.

Jurisdiction of Board.—In proceedings before the board under protest, the board has jurisdiction to inquire into and impeach the dutiable valuation reported to the collector by the appraiser, upon which the collector assessed the rate of duty to which the merchandise was subject.—*U. S. v. Passavant*, 169 U. S., 16.

The Board of General Appraisers has jurisdiction to correct a mistake in the appraisement arising from a clerical error in invoicing the goods as worth so many marks instead of so many pfennigs. Sustaining the board.—*U. S. v. Benjamin (C. C.)*, 72 Fed. Rep., 51.

The jurisdiction conferred on the board to review the decision of the collector as to the rate and amount of duties extends only to merchandise lawfully entered and regularly invoiced and appraised, and they have not jurisdiction, in the case of goods seized and libeled for forfeiture, to review the determination of the collector as to the duties to be paid thereon, as required by R. S. 938, in order to secure the delivery of the goods to the claimant. T. D. 11049 (G. A. 492) reversed.—In re Chichester (C. C.), 48 Fed. Rep., 281.

Proof of Classification Required of Importer.—To entitle an importer to a reversal of the decision of the Board of General Appraisers it must be proved that the classification contended for by him is right, not merely that the collector's classification is wrong.—In re Gerdau, 54 Fed. Rep., 143.

Return of Board—Certified Statement of Facts.—The return of the board should contain, in addition to the record and the evidence taken by them and their decision on the question of law, a certified statement of the facts involved in the case; and it is the duty of the board to pass upon the questions of fact raised by the protest.—In re Sternbach, 44 Fed. Rep., 413.

Reviewability of Findings of Board.—A finding by the Board of General Appraisers that an article is or is not similar to another article within the similitude clause is a conclusion of law rather than one purely of fact and is therefore reviewable by the court.—Dana v. U. S. (C. C.), 91 Fed. Rep., 522.

Review of Decision of Board.—Where the Board of General Appraisers sustained a protest in one particular and in all others affirmed the decision of the collector and the importer has thereupon applied to the circuit court for a review, no statement of errors being filed by the Government, the court can not, upon the importer conceding that there was no error in the decision of the Board of General Appraisers, proceed to review that decision so far as favorable to the importer, but must affirm it as it stands.—U. S. v. Lies, 170 U. S., 628.

Review of Decision of Board—Additional Testimony.—A decision of the Board of General Appraisers as to the classification of goods is subject to review in the circuit court on an application in behalf of the United States, which application may be made by the collector without first obtaining authority from the Secretary.

The rule stated in some cases that the court will not reverse the board, even if against the weight of evidence, where there is sufficient evidence to warrant its finding, has little if any application to cases in which additional testimony of an important character is taken in the circuit court and where the ultimate and decisive question is as much one of law as one of fact.—In re Wise, 73 Fed. Rep., 183.

Testimony Before Board.—There is nothing in the law governing the Board of General Appraisers which requires that there should be original testimony heard by them on appeal and such testimony is unnecessary where the record and exhibits sent up by the collector furnish sufficient basis for their decision.—In re Hempstead, 95 Fed. Rep., 967.

M. That the appraiser shall revise and correct the reports of the assistant appraisers as he may judge proper, and the appraiser, or, at ports where there is no appraiser, the person acting as such, shall report to the collector his decision as to the value of the merchandise appraised. At ports where there is no appraiser the certificate of the customs officer to whom is committed the estimating and collection of duties, of the dutiable value of any merchandise required to be appraised, shall be deemed and taken to be the appraisement of such merchandise. If the collector shall deem the appraisement of any imported merchandise too low, he may, within sixty days thereafter, appeal to reappraisement, which shall be made by one of the general ap-

1913

praisers, or if the importer, owner, agent, or consignee of such merchandise shall deem the appraisement thereof too high, and shall have complied with the requirements of law with respect to the entry and appraisement of merchandise, he may within ten days thereafter appeal for reappraisement by giving notice thereof to the collector in writing. Such appeal shall be deemed to be finally abandoned and waived unless within two days from the date of filing thereof the person who filed such notice shall deposit with the collector of customs a fee of \$1 for each entry. Such fee shall be deposited and accounted for as miscellaneous receipts, and in case the appeal in connection with which such fee was deposited shall be finally sustained, in whole or in part, such fee shall be refunded to the importer, with the duties found to be collected in excess, from the appropriation for the refund to importers of excess of deposits. The decision of the general appraiser in cases of reappraisement shall be final and conclusive as to the dutiable value of such merchandise against all parties interested therein, unless the importer, owner, consignee, or agent of the merchandise shall deem the reappraisement of the merchandise too high, and shall, within five days thereafter, give notice to the collector, in writing, of an appeal, or unless the collector shall deem the reappraisement of the merchandise too low, and shall within ten days thereafter appeal for re-appraisement; in either case the collector shall transmit the invoice and all the papers appertaining thereto to the board of nine general appraisers, to be by rule thereof duly assigned for determination. In such cases the general appraiser and boards of general appraisers shall proceed by all reasonable ways and means in their power to ascertain, estimate, and determine the dutiable value of the imported merchandise, and in so doing may exercise both judicial and inquisitorial functions. In such cases the general appraisers and the Boards of General Appraisers shall give reasonable notice to the importer and the proper representative of the Government of the time and place of each and every hearing at which the parties or their attorneys shall have opportunity to introduce evidence and to hear and cross-examine the witnesses for the other party, and to inspect all samples and all documentary evidence or other papers offered. Affidavits of persons whose attendance can not be procured may be admitted in the discretion of the general appraiser or Board of General Appraisers. The decision of the appraiser, or the person acting as such (in case where no objection is made thereto, either by the collector or by the importer, owner, consignee, or agent), or the single general appraiser in case of no appeal, or of the board of three general appraisers, in all reappraisement cases, shall be final and conclusive against all parties and shall not be subject to review in any manner for any cause in any tribunal or court, and the collector or the person acting as such shall ascertain, fix, and liquidate the rate and amount of the duties to be paid on such merchandise, and the dutiable costs and charges thereon, according to law; and no reappraisement or re-appraisement shall be considered invalid because of the absence of the merchandise or samples thereof before the officer or officers making the same, where no party in interest had demanded the inspection of such merchandise or samples, and where the merchandise or samples were reasonable accessible for inspection.

SEC. 28.

1909

Subsec. 13: That the appraiser shall revise and correct the reports of the assistant appraisers as he may judge proper, and the appraiser, or, at ports where there is no appraiser, the person acting as such, shall report to the collector his decision as to the value of the merchandise appraised. At ports where there is no appraiser the certificate of the customs officer to whom is committed the estimating and collection of duties, of the dutiable value of any merchandise required to be appraised, shall be deemed and taken to be the appraisement of such merchandise. If the collector shall deem the appraisement of any imported merchandise too low, he may, within sixty days thereafter, appeal to reappraisement, which shall be made by one of the general appraisers, or if the importer, owner, agent, or consignee of such merchandise shall be dissatisfied with the appraisement thereof, and shall have complied with the requirements of law with respect to the entry and appraisement of merchandise, he may, within ten days thereafter, give notice to the collector, in writing,

of such dissatisfaction. The decision of the general appraiser in cases of reappraisal shall be final and conclusive as to the dutiable value of such merchandise against all parties interested therein, unless the importer, owner, consignee, or agent of the merchandise shall be dissatisfied with such decision, and shall, within five days thereafter, give notice to the collector, in writing, of such dissatisfaction, or unless the collector shall deem the reappraisal of the merchandise too low, and shall, within ten days thereafter, appeal to re-appraisal; in either case the collector shall transmit the invoice and all the papers appertaining thereto to the board of nine general appraisers, to be by rule thereof duly assigned for determination. In such cases the general appraiser and boards of general appraisers shall proceed by all reasonable ways and means in their power to ascertain, estimate, and determine the dutiable value of the imported merchandise, and in so doing may exercise both judicial and inquisitorial functions. In such cases hearings may be in the discretion of the general appraiser or Board of General Appraisers before whom the case is pending be open and in the presence of the importer or his attorney and any duly authorized representative of the Government, who may in like discretion examine and cross-examine all witnesses produced. The decision of the appraiser, or the person acting as such (in case where no objection is made thereto, either by the collector or by the importer, owner, consignee, or agent), or the single general appraiser in case of no appeal, or of the board of three general appraisers, in all reappraisal cases, shall be final and conclusive against all parties and shall not be subject to review in any manner for any cause in any tribunal or court, and the collector or the person acting as such shall ascertain, fix, and liquidate the rate and amount of the duties to be paid on such merchandise, and the dutiable costs and charges thereon, according to law.

1909

1890

SEC. 13. That the appraiser shall revise and correct the reports of the assistant appraisers as he may judge proper, and the appraiser, or, at ports where there is no appraiser, the person acting as such, shall report to the collector his decision as to the value of the merchandise appraised. At ports where there is no appraiser the certificate of the customs officer to whom is committed the estimating and collection of duties, of the dutiable value of any merchandise required to be appraised, shall be deemed and taken to be the appraisal of such merchandise. If the collector shall deem the appraisal of any imported merchandise too low he may order a reappraisal, which shall be made by one of the general appraisers, or, if the importer, owner, agent, or consignee of such merchandise shall be dissatisfied with the appraisal thereof, and shall have complied with the requirements of law with respect to the entry and appraisal of merchandise, he may, within two days thereafter, give notice to the collector, in writing, of such dissatisfaction, on the receipt of which the collector shall at once direct a reappraisal of such merchandise by one of the general appraisers. The decision of the appraiser or the person acting as such (in cases where no objection is made thereto, either by the collector or by the importer, owner, consignee, or agent), or of the general appraiser in cases of reappraisal, shall be final and conclusive as to the dutiable value of such merchandise against all parties interested therein, unless the importer, owner, consignee, or agent of the merchandise shall be dissatisfied with such decision, and shall, within two days thereafter, give notice to the collector, in writing, of such dissatisfaction, or unless the collector shall deem the appraisal of the merchandise too low, in either case the collector shall transmit the invoice and all the papers appertaining thereto to the board of three general appraisers, which shall be on duty at the port of New York, or to a board of three general appraisers who may be designated by the Secretary of the Treasury for such duty at that port or at any other port, which board shall examine and decide the case thus submitted, and their decision, or that of a majority of them, shall be final and conclusive as to the dutiable value of such merchandise against all parties interested therein, and the collector or the person acting as such shall ascertain, fix, and liquidate the rate and amount of duties to be paid on such merchandise, and the dutiable costs and charges thereon, according to law.

DECISIONS UNDER THE ACT OF 1913.

Duty Collected Upon Higher than the Entered or Appraised Value.—No provision of law under which duties can be collected upon a greater value than that entered or returned by appraising officers. Customs officers should not, therefore, assume to appraise merchandise at a value higher than that returned by the appraiser and to collect increased duties on such valuation.—Dept. Order (T. D. 36279).

Appeal Not Signed.—Subsection 29 of section 28, tariff act of 1909, does not contemplate any review by appeal of the action of the Board of General Appraisers sitting as a reappraisal board and is restricted to a review of their action as a classification board.

Paragraph M, tariff act of 1913, confers ultimate and exclusive appellate jurisdiction to appraise upon the board of three general appraisers to which the case is assigned; and the decision of that body becomes, by the precise language of the statute itself, final and conclusive on all parties, and is not subject to review by appeal.

This court has no jurisdiction to review the action of the Board of General Appraisers in dismissing an appeal to re-reappraisal on the ground that the appeal was not signed.—U. S. v. Loeb & Schoenfeld Co. (Ct. Cust. Appls.), T. D. 36961.

Collector's Right Where Importer Abandons Appeal.—In reappraisal cases the collector and the importer having an equal right of appeal under the provisions of the statute (par. M, sec. 3, tariff act of 1913), if the importer only appeals the collector can not, in the event of abandonment of such appeal by the importer without the submission of evidence in support of his claim that he deems the appraised value too high, attack the value against which he has not expressed dissatisfaction by appeal.

The importer having failed to offer evidence in support of his claim that the value appealed against was too high and having withdrawn his appeal, it remains only for the board to affirm the value appealed against. *United States v. Loeb* (107 Fed., 692), *Larzeler v. United States* (5 Ct. Cust. Appls., 510; T. D. 35154), *United States v. Loeb* (7 Ct. Cust. Appls., —; T. D. 36961), G. A. 5694 (T. D. 25336), *Interstate Commerce Commission v. Louisville & Nashville Railroad Co.* (227 U. S., 88), *United States v. Lies* (170 U. S., 633), and *Opinions of Attorney General* (vol. 19, p. 667, and vol. 20, p. 40).—T. D. 37178 (G. A. 8063).

Packed Price on Net Weight.—Balsam of copaiba was entered and returned at its gross weight packed in tins, and appraised at a value per pound packed. The importers showed the weight of the tins and that the merchandise was always bought and sold in this country at a price which included the containers, but was based on the net weight of the merchandise. The dutiable value was the value per pound packed, multiplied by the net weight. *United States v. Francklyn* (4 Ct. Cust. Appls., 54; T. D. 33306) cited.—U. S. v. Suzarte & Whitney (Ct. Cust. Appls.), T. D. 37219.

Reappraisal, Legality of.—To justify a classification board's null and void an appraisal by three general appraisers in declaring it was based upon a wrong theory of the law. It is not sufficient to show on the ground that and certainly that they did proceed upon such wrong theory. This does not appear from a record which does not contain a recital of all the facts before the reappraisal board and does not contain any statement as to the theory upon which such board proceeded.—U. S. v. Johnson Co. (Ct. Cust. Appls.), T. D. 37050.

Slashed Samples of no commercial value as such, the residue not given away, being sold as rags, should not be appraised on the value proportionate to that of the original articles for which they were samples, but at the value at which similar merchandise is sold as rags at the time of shipment.

Upon entry being permitted upon a Government form entitled "Informal entry of packed packages of inclosures not exceeding \$100 in value," the more formal statutory requirements concerning the entry are waived, and by making such entry the importer has not lost his right of reappraisal.—T. D. 37140 (G. A. 8054).

Legality of Reappraisal.—The merchandise in question (feathers) was advanced in value by the appraiser by disallowing a 5 per cent cash discount appearing on invoice and deducted by importers on entry, which advance was finally affirmed by the board on appeal to re-appraisal.

In *Lewisohn v. U. S.* (5 Ct. Cust. Appls., —; T. D. 34329), which involved precisely the same facts as are here presented, the court held that "the allowance or disallowance of a cash discount, upon basic value of merchandise, in the nature of interest, dependent in amount upon the time of payment, and whether or not the same enters into the dutiable value of the merchandise, is a matter of legal determination" and not the ascertainment of a fact.

In harmony with the ruling in the *Lewisohn* case, we sustain the claim of the importers and reverse the action of the collector.—Ab. 36571 (T. D. 34789).

Reappraisal Appeals—Act of 1913.—There is nothing in the law which requires a collector to notify an importer of the time within which it will be necessary for him to take his appeal in a reappraisal case. Any such notice on the part of a collector is merely an act of courtesy.—T. D. 34996 (G. A. 7648).

Second Notice of Advance Gives No New Right of Appeal.—*Held*, that inasmuch as the importer had previously received notice of the appraisal, the sending of the second notice did not give him the right to file an appeal to reappraisal on the items on which he had made additions on entry, but which he had failed to include in his original appeal.—T. D. 34902 (G. A. 7629). See T. D. 34842 (G. A. 7615).

Invoicing Imported Merchandise.—The tariff act of 1913 provides a clear and distinct method of invoicing imported merchandise. The invoice should show of whom goods are purchased, when, where, and the price paid; and a failure so to do is not a compliance with the law and does not permit of an appeal to reappraisal. If goods are purchased on commission, that fact should be stated in the invoice, and also of whom, when, where, and the price paid, if a commission paid is to become a nondutiable item.—T. D. 34608 (G. A. 7583).

Faulty Invoice Does Deprive Importer of Right of Appeal.—The fact that an invoice fails to furnish the information required by paragraph D of section 3 of the tariff act of October 3, 1913, does not deprive an importer of his right of appeal from an appraisal of the merchandise covered thereby. The collector having accepted the invoice and entry and having forwarded same to the appraiser who made an appraisal of the merchandise, the right of the importer to appeal to reappraisal is absolute. The collector may refuse entry upon such an invoice, but he can not, after its acceptance and appraisal of the merchandise covered thereby, contend that the importer has not a statutory right to demand a reappraisal.—T. D. 34809 (G. A. 7605).

Reappraisal of Items on Invoice Not Mentioned in Appeal.—Where an importer in his appeal to reappraisal limits his demand for review to

"all items advanced" the general appraiser is without jurisdiction to reappraise any other items of merchandise described on the invoice not advanced by the appraiser. The same rule applies to reappraisements by boards of three general appraisers.

It is the duty of the collector, under the provisions of subsection M of section 3, tariff act of 1913, to transmit with the invoice the notice of appeal to reappraisal, such appeal being one of the papers appertaining to the invoice. *U. S. v. Loeb* (107 Fed., 692) and *G. A. 7563* (T. D. 34455) cited. *G. A. 5694* (T. D. 25336) followed.—T. D. 34859 (*G. A. 7619*).

Rule of Reappraisal the Same as for Appraisal.

FINDING MARKET VALUE.—The duty of an appraising officer, as defined in paragraph K, section 3, tariff act of 1913, is to find market value and report such to the collector. A general appraiser hearing an appeal to reappraisal is governed by the same law, and his finding, based on the facts introduced at the trial, is a judicial determination as to value.

GENERAL AVERAGE.—A general average of dissimilar merchandise is not the way to establish market value, especially when the articles are entered and valued separately.

ENTERED VALUE.—An appraising officer is bound to accept for assessment purposes an amount not less than the entered value placed upon the merchandise by the importer, and on appeal the burden rests upon the importer disputing the value to establish by testimony that the advance is not correct. A general appraiser has no authority to arbitrarily disregard the testimony and sustain a value not supported by testimony.—T. D. 34808 (*G. A. 7604*).

New Trials in Reappraisal Cases Before a Single General Appraiser.—After a reappraisal case has been decided by a single general appraiser and an appeal from said decision has been made to the board of three general appraisers, the single general appraiser has lost jurisdiction and can not entertain the application for a new trial.

Under the statute only the "board of three general appraisers, or a majority of them," is empowered to grant a new trial, and, consequently, a single general appraiser has not the power to grant a new trial in a case in which he has rendered his decision.—T. D. 34785 (*G. A. 7599*).

Protest Fees.—Only one protest fee is required on each entry under paragraph M. A protest fee should be deposited for each protest against the payment of a fee. Each payment of a fee to be considered a separate payment. Pending determination by the Board of General Appraisers, a number of claims may be included in one protest.—Dept. Order (T. D. 33956).

Time Within Which Fee Must Be Deposited.—The fee provided by paragraph M of section 3 of the act of October 3, 1913, must be deposited within two days after the filing of the appeal to reappraisal, and holidays or Sundays should not be excluded.—Dept. Order (T. D. 33904).

DECISIONS UNDER THE ACT OF 1909.

Legality of Appraisal.—It is now well settled that an appraisal of imported merchandise by a local appraiser is final and conclusive in the absence of an appeal by the collector or importer in the manner and time prescribed by law, and when the appraiser has once exercised his statutory power of appraisal he is without authority thereafter even to correct a clerical error in his appraisal. *U. S. v. Morewood* (94 Fed., 639); *G. A. 5100* (T. D. 23601); *G. A. 7563* (T. D. 34455).

In this case the appraiser made the appraisal of the merchandise January 30, 1913, and returned the invoice to the collector with a notation thereon

confirming the entered value. No appeal having been taken from this appraisement in the manner and time prescribed by law, the appraisement was final and conclusive upon all parties, and the attempt of the appraiser thereafter to amend his return was unauthorized.—Ab. 35995 (T. D. 34604).

Appeal to Reappraisement.—Appeals are regulated or denied by statute. The transmission by a collector of another port by mailing is a compliance with the statute.

In the present case it appears that the papers were signed by the collector of the port of Philadelphia on the 8th day of October, 1912, and were transmitted to and received by the Board of General Appraisers on October 9, 1912. It is suggested that the evidence is silent as to when the papers were mailed, but the date of signing, aided by the presumption of regularity of official proceedings, would be sufficient to indicate that the papers were mailed on the day of their execution.—*Larzelere & Co. v. U. S. (Ct. Cust. Appls.)*, T. D. 35154; (G. A. Ab. 35421) T. D. 34416 affirmed.

Board's Jurisdiction.

"RATE AND AMOUNT OF DUTIES."—The words "rate and amount of duties" occurring in the statute define a class of decisions against which protest will lie for any cause distinctly and specifically stated and are not a limitation of the grounds upon which a collector's decision can be assailed.

BOARD'S JURISDICTION TO ORDER REAPPRAISEMENT.—The board has jurisdiction to hear and determine protests against a collector's decision assessing a rate and amount of duty upon imported merchandise on the ground that the appraisement is irregular or invalid, and a demand for a reappraisement operates after the manner of supersedeas.

PAROL TESTIMONY.—The parol testimony here does not contradict but merely supplies an omission, and the rule against its admission, in the absence of any statutory or regulative requirement of a record, will not be enforced.—*U. S. v. American Express Co. (Ct. Cust. Appls.)*, T. D. 34550; (G. A. 7512) T. D. 33962 affirmed.

LIQUIDATION PENDING APPEAL.—The liquidation of an entry by the collector pending an appeal to the Board of United States General Appraisers for reappraisement is illegal, null, and void.—T. D. 33962 (G. A. 7512).

Validity of Reappraisement.—A board of reappraisement is not a judicial tribunal and may use information acquired on previous appraisements. They had here jurisdiction of the subject of the proceedings, and the classification board did not err in sustaining the other board's action. *Wolff v. U. S. (1 Ct. Cust. Appls., 181; T. D. 31217)*.—*Shallus v. U. S. (Ct. Cust. Appls.)*, T. D. 34525; (G. A. Ab. 33988) T. D. 33833 affirmed.

On the authority of *U. S. v. Haviland (177 Fed., 175; T. D. 30296)*, protest overruled as to the validity of reappraisement, the board reaching the conclusion that there was some evidence before the reappraisement board.—Ab. 33988 (T. D. 33833).

Reappraisement in the Absence of Samples.—The protest itself shows that the reappraisement by the single general appraiser was made without a sample of the importation or the merchandise before him and there was no waiver of production of samples. The appraisement by the single general appraiser was accordingly invalid and the appraisement of the local appraiser became again operative.—*U. S. v. Scanlan (Ct. Cust. Appls.)*, T. D. 34473; (G. A. Ab. 33982) T. D. 33833 reversed.

Power of the Appraiser—Second Appraisement.—Merchandise which has been regularly entered and appraised by the United States appraiser against whose appraisement an appeal has been taken to reappraisement by the col-

lector, and such appeal having been dismissed upon the ground that it was not taken within the statutory period, may not be made the subject of a new or second appraisal by the United States appraiser. By the exercise of his statutory power of appraisal in the first instance that officer became *functus officio*, and a subsequent appraisal of the same merchandise by him was illegal and void and could not be the basis of an appeal to reappraisal, especially after the merchandise had passed out of the custody of the Government. *U. S. v. Morewood* (94 Fed., 639); *Maddaus v. U. S.* (3 Ct. Cust. Appls., 330; T. D. 32623); *Tilge v. U. S.* (1 Ct. Cust. Appls., 462; T. D. 31507); *U. S. v. Loeb* (107 Fed., 692); *G. A. 5100* (T. D. 23601); *G. A. 3292* (T. D. 16647).

The Board of General Appraisers is a judicial tribunal and its members, in the hearing and determination of issues presented to them, act judicially. *G. A. 6738* (T. D. 28849); *Miller, Const. U. S.*, 314; *In re Van Blankensteyn* (56 Fed., 475); *Marine v. Lyon* (65 Fed., 992).—T. D. 34455 (*G. A. 7563*).

Full Board of General Appraisers May Be Represented by One Member.—It is competent for a single member of the board, acting in the capacity of a referee, to take testimony at a reappraisal hearing for and on behalf of his absent associates. So long as the proof offered has been duly considered by the full board or a majority thereof the decision rendered thereupon has the full effect of a legal decision and determination by said board.—T. D. 34397 (*G. A. 7558*).

Validity of Reappraisal.—The feathers of the importation were bought at public auction in London on terms that allowed a discount for payment in cash, and the invoice showed the total value less the discount for cash. In cases where immediate payment is made and the cash discount allowed, what is the dutiable value of the merchandise?—*Lewisohn Importing & Trading Co. v. U. S.* (Ct. Cust. Appls.), T. D. 34329; (*G. A. Ab. 34323*) T. D. 34026 reversed. Whether this discount was to be included in the dutiable value of the merchandise was a question of law, not one of fact. The case is ruled by *Arthur v. Goddard* (96 U. S., 145).

Reappraisal, Review of, by Secretary of the Treasury.—The collector, acting under instructions from the Treasury Department, refused to adopt a valuation found by three general appraisers upon re-appraisal and assessed duty upon the value found by the local appraiser as affirmed by a single general appraiser. The presumption is that the reappraising board of three acted in accordance with law, and there is nothing in the record to overcome this presumption. The appeal must fail.—*U. S. v. Bradshaw & Co.* (Ct. Cust. Appls.), T. D. 34168; (*Ab. 32981*) T. D. 33511 affirmed.

Reappraisal—Waiver—A Waiver Construed.—The waiver by the importers here set out was intended to apply to and continue throughout all and any proceeding in the reappraisal of the importations. The subsequent conduct of importers confirms this conclusion.

Waiver and Absence of Samples.—In view of the stipulation and waiver, the absence of samples in the proceeding on appeal before the Board of three General Appraisers did not invalidate this board's finding.—*Gallagher & Ascher v. U. S.* (Ct. Cust. Appls.), T. D. 33518; (*G. A. 7411*) T. D. 33030 affirmed. The court assumed upon the authorities cited that the presence of samples before a general appraiser or a board of three general appraisers might be waived.

Any question of the regularity of the reappraisal proceedings in this cause might have been waived. *Maddaus v. U. S.* (3 Ct. Cust. Appls., 330; T. D. 32623). The former decision was rested upon the unmistakably clear waiver in writing filed by the appellants, and this as construed in the light of a uniform

current of decisions of this court.—*Gallagher & Ascher v. U. S. (Ct. Cust. Appls.)*, T. D. 33849; petition for rehearing on T. D. 33518 denied.

Laches.—The appellants' contentions are not passed on for the reason that the application, made on March 25, 1912, for the vacation of a decision, August 12, 1911, was so long delayed after the publication of that decision as to amount to laches.—*Dunlop Bros. & Hague & Co. v. U. S. (Ct. Cust. Appls.)*, T. D. 33475; (*G. A. Ab.* 26335) T. D. 31813 affirmed.

Reappraisement Without Samples.—The decision in *Oelrichs v. U. S.* (2 Ct. Cust. Appls., 355; T. D. 32091) does not modify the decision in *Tilge v. U. S.* (1 Ct. Cust. Appls., 462; T. D. 31507). In the case here not only was there no sample before the appraising officer or a legal substitute therefor, but the record discloses that the jurisdiction of the appraising officer was protested because of that fact. Until the jurisdictional requirement of the statute have been complied with there can be no "decision," as contemplated by the statute to be accepted as final in character.—*Maddaus v. U. S. (Ct. Cust. Appls.)*, T. D. 32623; T. D. 32109 (*G. A.* 7311) reversed.

Legality of Reappraisement.

"OPEN HEARING."—By the "open hearing" in reappraisement cases provided for in section 28, subsection 13, tariff act of 1909, it is contemplated that no evidence shall be considered in rendering decision in such cases except that which was produced at the hearing in the presence of the importer or his attorney and the authorized representative of the Government and duly admitted as forming the record in the case.

REVIEW ON PROTEST.—The Board of General Appraisers, when sitting as a classification board to review the decision of a board of reappraisement, has no authority or power to modify or change the finding of the reappraisement board. It must either sustain such finding or sustain a protest which challenges the validity of said reappraisement proceedings.

LEGALITY OF REAPPRAISEMENT BOARD DECISION.—The decision of reappraisement board 2 in advancing a china dinner set 26½ per cent over the entered value was not warranted by the evidence in the record before it and was therefore arbitrary and void.

Finality of Appraisement.—The provision in subsection 13, section 28, tariff act of 1909, that in cases where no objection is made thereto the decision of the appraiser "shall be final and conclusive against all parties" is conclusive against the collector.—*Bornn Hat Co. v. U. S. (C. C. A.)*, T. D. 34846; T. D. 31730 (*D. C.*) affirmed. See *Calhoun v. U. S. (D. C.)*, T. D. 31730.

"STARE DECISIS."—The ruling made by the circuit court of appeals in *Haviland's case* (177 Fed. Rep., 175; T. D. 30296) should be followed by this board in reviewing reappraisement cases analogous in character arising prior to August 5, 1909, when the present tariff act went into effect.—T. D. 31084 (*G. A.* 7124).

Open Reappraisement Hearings.—Under section 28, subsection 13, tariff act of 1909, providing that in the discretion of the Board of General Appraisers reappraisement hearings may "be open and in the presence of the importer or his attorney and any duly authorized representative of the Government," it is not permissible to have a portion of the evidence admitted at an open hearing and the remainder introduced at a closed hearing, with no provision for its inspection by the opposing party. The board may, in its discretion, however, in a case where one side wishes to submit evidence procured under a pledge of secrecy, deny the request for an open hearing and have the entire proceedings closed.—T. D. 30466 (*G. A.* 6999).

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Reappraisement of Swiss Chocolate.—There is no contention that the reappraisement board was without jurisdiction, that it was guilty of fraud, or that it added independent items not dutiable to make the appraised value. The board had before it evidence as to the course of business of manufacturers and customers where the chocolate was handled in Switzerland and at the time this was exported. That evidence related both to the quantities and prices of the commodity in business transactions in Switzerland and it can not accordingly be held that the board's finding was based wholly upon the "conventional agreement" by which it had been sought to control the sale of chocolate in that country. Neither the Board of General Appraisers sitting as a classification board nor this court has authority on the record in this case to review the reappraisement as made. *Wolff v. U. S.* (1 Ct. Cust. Appls., 181; T. D. 31217).—*Horace Day Co. v. U. S.* (Ct. Cust. Appls.), T. D. 32456; (G. A. Abs. 23334 and 23335) T. D. 30645 affirmed.

Reappraisement by Board of General Appraisers.—On an admittedly imperfect record it appears a Board of General Appraisers reappraised a consignment of goods; yet even if it be assumed the board erred in excluding relevant evidence or in admitting irrelevant evidence, or that it assigned an undue weight to the evidence before it, still, there being evidence that the board acted upon evidence, and there being no evidence here that the board exceeded its authority, it will be presumed to have made its finding within the scope of its authority, and its decision must stand. *Wolff v. U. S.* (T. D. 31217) cited and approved.—*Briggs, Extrx., v. U. S.* (Ct. Cust. Appls.), T. D. 31482; (G. A. Ab. 23555) T. D. 30710 affirmed.

Final Appraisement.—The customs laws contemplate finality at some point in all appraisement proceedings and finality is by law attached on appeal to an appraisement by the Board of General Appraisers, when the appeal comes to the board from a finding of a general appraiser, and a decision of that board on the actual market value of the merchandise in question is conclusive against all parties interested therein. This decision is cited and approved in T. D. 31482 (Ct. Cust. Appls.), *supra*.

And, without inquiring into the objections urged against the reappraisement of matting by a local appraiser as erroneous, or as unsupported by the evidence, or as founded on irrelevant considerations, the Board of General Appraisers on appeal having found that appraisal correct, this finding can not be disturbed.—*Wolff v. U. S.* (Ct. Cust. Appls.), T. D. 31217; (G. A. 6888) T. D. 29628 affirmed.

Appeal by Collector—Reasonable Time.—The protestant claimed that in ordering a reappraisement the collector did not act within a reasonable time. The entry was made September 20, 1907, reliquidated December 16, 1907, and the collector ordered reappraisement September 9, 1908.

It was held by the board in the case of Favalaro, G. A. 6983 (T. D. 30378), *supra*, that the collector of customs in requesting a reappraisement of imported merchandise under the authority of section 13 of the customs administrative act of 1890 is required to act within a reasonable time, and where such request was not made until the lapse of nearly one year from the date of entry and the goods had been delivered to the importer and gone into consumption, his action is invalid as not being taken within a reasonable time. We are of opinion that the request made in this case was not within a reasonable time.—Ab. 24521 (T. D. 31182).

Held, that 35 days after appraisement was a reasonable time in which to order a reappraisement.—T. D. 27408.

Reappraisement—Validity.—A reappraisement by a Board of General Appraisers is not invalid simply because the value fixed is different from that found on subsequent reappraisements of the same kind of goods.—*T. D. 29628* (G. A. 6888); affirmed *T. D. 31217* (Ct. Cust. Appls.), *supra*.

Appeals Under Act of May 27, 1908.—Under the act of May 27, 1908 (35 Stat., 403; *T. D. 29044*), providing that "hereafter" the parties litigant should be required to introduce all their evidence before the Board of General Appraisers, there was no right to introduce further evidence in the circuit court as to cases decided by the board after said date, even though the cases arose before that date and had been submitted to the board for decision under the previous law, customs administrative act of 1890, section 15 of which permitted further evidence to be taken in the circuit court.—*Beer v. U. S. (C. C.)*, *T. D. 30843*; (G. A. 6788) *T. D. 29144* affirmed.

ported merchandise is final and conclusive when their proceedings have been regular and within the law, and the reviewing or classification board is not called upon to theorize how the reappraisement board arrived at its figures on questions of valuation.

Finality of Reappraisement.

ACTION OF BOARD OF GENERAL APPRAISERS.—The action of a Reappraisement Board of General Appraisers in determining the foreign market value of imported merchandise is final and conclusive when their proceedings have been regular and within the law, and the reviewing or classification board is not called upon to theorize how the reappraisement board arrived at its figures on questions of value.

EXAMINATION OF MERCHANDISE.—The presence and examination of merchandise or samples thereof is unnecessary to a statutory review by a Reappraisement Board of General Appraisers, the statute only requiring that they shall examine and decide the questions presented by the record. G. A. 6655 (*T. D. 28382*); G. A. 6738 (*T. D. 28849*); *U. S. v. Loeb* (107 Fed. Rep., 692); *U. S. v. Curnen* (146 Fed. Rep., 45; *T. D. 27262*) cited.—*T. D. 30570* (G. A. 7014).

Failure to Examine Merchandise.—Certain merchandise was reappraised by a general appraiser under the provisions of section 13, customs administrative act of June 10, 1890, on appeal by the collector of customs. Neither the goods themselves nor samples thereof were produced at the reappraisement proceedings, as the merchandise had passed out of the possession and control of the importers, and the collector had not duly demanded its return according to a bond for its redelivery given under section 2899, Revised Statutes. *Held*, that the reappraisement was invalid and that duty should be assessed on the basis of the value found by the local appraiser.—*U. S. v. Murphy (C. C.)*, *T. D. 26269*.

In a reappraisement of imported merchandise by a single general appraiser or a board of three general appraisers, under section 13, customs administrative act of June 10, 1890, it is not enough to inspect the examinations covered by section 2901, Revised Statutes, which requires that at least 1 package of every invoice and 1 package at least of every 10 packages of the merchandise shall be sent to the public stores for examination and appraisement. Unless all of the goods under reappraisement, or samples representing every variety thereof, are present before the general appraisers in such proceedings the reappraisement is invalid.

DUTIABLE VALUE.—Where a reappraisement by a general appraiser or a board of three general appraisers is invalidated by failure of the general appraiser or of the board to have produced before them and to examine all the different varieties of the merchandise in question, or samples thereof, duty should be collected on the basis of the value stated by the importer on entry, and not

on that found by the local appraiser, even though the appraisement by that officer were valid, if it appears that during the pendency of the reappraisement proceedings the importers sought and were denied permission to produce evidence equivalent to the presence of the actual samples, though neither the merchandise itself nor actual samples therefrom could have been produced.—*Curnen v. U. S. (C. C.)*, T. D. 25975; (*G. A. 5720*) T. D. 25423 reversed.

Reappraisement.

ENTERED VALUE—WHEN SUBJECT TO CHALLENGE.—Certain tomato sauce was voluntarily entered by the importer at 7.50 lire per 100 cans, and this valuation was sustained by a general appraiser and a board of general appraisers. *Held*, that neither of these reappraisements could be challenged by protest so as to reduce the assessment below that made by the collector on such entered value, unless such entry was made under duress.

VALIDITY—PRESENCE OF SAMPLES.—Where it does not appear that the presence of samples of the merchandise in question would have aided to a more correct conclusion, a reappraisement is not to be held invalid merely because there were no samples before the reappraisement board.—T. D. 30378 (*G. A. 6983*).

PROCEDURE ON WRONG PRINCIPLE.—Where a board of general appraisers in making a reappraisement acts outside of or contrary to law or proceeds upon a wrong principle or without any evidence to sustain their findings, their decision may be set aside.

WANT OF LEGAL EVIDENCE.—A reappraisement decision was based on indirect evidence, the result reached being based upon portions of the evidence read apart from the context, upon unwarranted deductions and assumptions unsupported by the proof, and upon arbitrary deductions to equalize certain conditions peculiar to the case; and many of the propositions urged in support of the conclusions made were based upon conjecture and guesswork. *Held*, that this was not such proof as is contemplated by the statute, and that, there being no legal evidence to justify the reappraisement, it should be set aside.

PRINCIPAL MARKET.—The evidence in a reappraisement case relative to china exported from Limoges was to the effect that 80 per cent of the entire output of the factory was exported directly to the United States and that there was no open market for such china at Limoges, but it showed the values established at Paris, where the remaining 20 per cent of the Limoges output was disposed of; this latter value, however, was affected somewhat by the fact that the Paris house sold at both wholesale and retail, and that the goods handled there differed materially from those sold at Limoges for export to the United States. *Held*, that there was no evidence that Paris was the principal market for the china thus exported.—*U. S. v. Haviland & Co. (C. C. A.)*, T. D. 30926; T. D. 29523 (*C. C.*) and (*G. A. 6655*) T. D. 28382 affirmed. Application for writ of certiorari denied. (*U. S. Sup. Ct.*; suit 5034.)—T. D. 30370.

Finality of Reappraisement.—In a reappraisement case relating to Smyrna wools that had been bought at a round price in a mixed condition, but before exportation to the United States had been sorted according to color, the Board of General Appraisers held that the value of the white wools was greater than the round price paid for the mixed material in the state in which it was bought. *Held*, that, there being no charge that the board had acted illegally in denying the importers a hearing and an opportunity to produce testimony in the matter, and there being some evidence as to a market value for white wool in Smyrna, the reappraisement decision was "final and conclusive" as prescribed in section 13, customs administrative act of 1890.—*Grubnau v. U. S. (C. C. A.)*, T. D. 30369; T. D. 29835 (*C. C.*) and Ab. 15933 (T. D. 28300) affirmed.

Assessment on Appraised Value.—It is immaterial that a reappraisement is illegal, if the value found is the same as that ascertained on an appraisement by the local appraiser which is not shown to be invalid; for where a reappraisement is illegal the dutiable value is that found on the last legal appraisement.—*Grubnau v. U. S. (C. C.)*, T. D. 29835; affirmed in T. D. 30369 (C. C. A.) *supra*.
Legality of Appraisements.

DEFAULTED PROTEST.—Where there is no appearance at the time set for the hearing of a case before the Board of General Appraisers, that board will under its rule treat the case as submitted and determine it upon the record. Ordinarily upon such a default a case is treated as not proved and the protest overruled; but, where papers filed by the collector with the protest clearly show that the contention of the protestant is correct, the protest will be sustained and the collector directed accordingly.

NOTICE OF ADVANCE.—Notice of the advance in value of imported merchandise made by the appraiser must be given to the importer as provided for in the customs regulations. If this notice is not given the appraisement is not conclusive against the importer, and liquidation thereon is illegal. *Lace House v. U. S.* (141 Fed. Rep., 869; T. D. 26970); *Hawley's case*, G. A. 6465 (T. D. 27671); *Independent Importing Co.'s case*, G. A. 6621 (T. D. 28250).—T. D. 30336 (G. A. 6978).

Notice of advance in the value of imported merchandise made by the appraiser may be served by mail and the depositing of such a notice in a duly franked envelope properly addressed is *prima facie* evidence of its receipt, but this may be overcome by positive testimony that such notice was not received and was not addressed to the residence or place of business of the importer.—T. D. 28250 (G. A. 6621).

Sufficiency of Notice of Advance.—Where an appraiser adds to the invoice value of merchandise, it is sufficient to notify the importer that certain items upon his invoice have been advanced without specifically naming all of the items.—T. D. 27715 (G. A. 6478).

Reappraisement Records.

WHAT CONSTITUTES REAPPRAISEMENT RECORD.—Reappraisement proceedings under section 13, customs administrative act of 1890, are separate and distinct from protest proceedings under section 14; and where the legality of a reappraisement is challenged by proceedings under the latter section, the entire reappraisement record does not become a part of the record in the latter proceedings unless expressly admitted.

APPEAL—EXCLUDED EVIDENCE.—The provision in section 15, customs administrative act of 1890, that on appeal to the circuit court the Board of General Appraisers shall return "the record and the evidence taken by them," does not require that the board shall return evidence which they excluded.

ASSIGNMENTS OF ERROR.—Where on appeal to the circuit court from the Board of General Appraisers, under section 15, customs administrative act of 1890, it is desired that evidence excluded by the board should have been passed on by the court, it is requisite either that an exception should be taken to the board's ruling excluding the evidence and the matter brought before the court in the assignments of error, or that the evidence should have been offered as additional evidence in the manner provided in said section.—*Harris v. U. S. (C. C.)*, T. D. 30275.

FAILURE TO CONSIDER EVIDENCE.—After part of the evidence in a reappraisement case had been taken before a general appraiser the case was continued for further hearing before another general appraiser, who subsequently decided the case but by oversight failed to consider the evidence taken before the

former general appraiser. *Held*, that he had jurisdiction to decide the case, his failure to consider a part of the evidence being only an error of procedure, which did not go to the jurisdiction.

ERROR IN PROCEDURE—MODE OF CORRECTION.—Where a general appraiser through oversight failed to consider a portion of the evidence in a reappraisement case which he decided, the remedy of the aggrieved party was by appeal as provided in section 13, customs administrative act of 1890, rather than by protest as provided in section 14.—*U. S. v. Taylor's Sons* (C. C.), T. D. 29849.

The decision below, T. D. 28299 (G. A. 6641), sustained the protest of Charles M. Taylor's Sons against the assessment of duty by the collector of customs at the port of Philadelphia. Note T. D. 28356, directing the application for review.

Appraisements Without Invoice.

AUTHORIZED BY SECRETARY.—Appraisements of imported goods without invoice can be made by the approval of the Secretary of the Treasury under article 1450, Customs Regulations of 1899; but such permission confers no privilege in violation of the Federal statutes.

JURISDICTION OF BOARD UNDER SECTION 14, ACT OF 1890.—A board of general appraisers, sitting as a board of classification, will decline jurisdiction of a protest filed under section 14 of the customs administrative act, unless the goods under consideration have been lawfully entered, regularly invoiced, and regularly appraised.

THE BOARD HAS NO POWER TO MANDAMUS COLLECTOR.—Where the collector of customs declines to grant an importer's application for reappraisement under section 13 of said act, the Board of General Appraisers has no authority to issue an order in the nature of mandamus to compel him to grant such application.—T. D. 28814 (G. A. 6732).

Appraisement of Mixed Wools.—In accordance with immemorial custom in the market of Bagdad, white and colored wools were bought together at the same price, without any distinction as to color; but before exportation they were separated, each color being baled by itself. *Held*, that in finding the "actual market value in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States," under section 19, customs administrative act of 1890, the appraising officers should consider only the price paid in the Bagdad market, and that no distinction should be made between the value of the white and colored wools, but that all should be appraised at the same price.—*Gulbenkian v. U. S.* (C. C. A.), T. D. 28079; T. D. 27512 (C. C.) and (G. A. 6151) T. D. 26719 reversed. Note T. D. 30369 (C. C. A.).

Reappraisement—Correction of Return.—A board of general appraisers, after returning its findings in a reappraisement case made a supplemental return two months later, stating that the plain wooden coverings of the merchandise were not included in the value given in the previous return. *Held*, that this amendment could not legally be made, and that the decision of the board should be construed as including said coverings in the value stated in the original return, irrespective of the provision in paragraph 281, tariff act of 1897, governing the assessment of the merchandise in question (chocolate).—*U. S. v. Leeming* (C. C.), T. D. 27986.

Board of General Appraisers—Manner of Acquiring Jurisdiction.—A board of three general appraisers, or a single general appraiser, acquires jurisdiction to hold a reappraisement simply by the transmission to them by the collector of the record and other papers mentioned in section 13 of the

customs administrative act, and directing a reappraisal, without any statement made by such officer that he deems the appraisal as made too low.

The provisions of the customs administrative act and other Federal statutes contemplate and presuppose an entry of imported merchandise, except as otherwise specially provided by law. The jurisdiction of the Board of General Appraisers would seem to be confined to cases where such entry has been made.—T. D. 27887 (G. A. 6536).

Illegality and Irregularity of Reappraisal.

JURISDICTION OF THE BOARD—HOW ACQUIRED.—Where a reappraisal of merchandise is held by a single general appraiser, and the collector of customs, deeming such reappraisal to be too low and desiring to have the same reviewed, section 13 of said act prescribes that he shall transmit the invoice and all the papers pertaining thereto to the board of three general appraisers, who are required to examine and finally decide the case. The jurisdiction of the board in such cases attaches by the transmission to it of the designated papers by authority of the collector. Such jurisdiction is not affected or abrogated by the mere fact that some investigation had been made as to the market value of the merchandise prior to final decision by the board and before jurisdiction acquired, provided that before such decision the importers had such notice and opportunity for hearing as enabled them to give their views and make their contention in respect to the market value of the merchandise.

COLLECTOR MAY INSTRUCT A DEPUTY TO ACT IN A MINISTERIAL CAPACITY.—Where such papers are transmitted to the board by a deputy collector under authority and by direction of the collector, the act of the deputy must be taken as that of his principal, and would be as valid as if made directly by the collector.

CLERICAL ERROR.—Where no advance in market value was made by the local appraiser on a portion of the merchandise and none made by the single general appraiser, the collector inadvertently assuming the contrary, and where the board of three general appraisers merely affirmed the appraised value, the action of the board will be construed to cover only such invoice items as have been advanced by the local appraiser.—T. D. 27717 (G. A. 6480).

Reappraisal After Liquidation.

POWER AND DUTY OF COLLECTOR.—The collector is authorized to reliquidate an entry at any time within one year, and he may order a reappraisal of merchandise within a reasonable time after the original appraisal, even after the liquidation of the entry, and reliquidate the entry on the value of the merchandise as found by the reappraisal. Meyer, Wilson & Co.'s case, G. A. 6162 (T. D. 26749) ; *Iasigi v. Collector* (1 Wall., 375).—T. D. 27408 (G. A. 6379).

Invalid Reappraisal.—Where, under the provisions of section 13, customs administrative act of 1890, an importer has appealed from the value found by the local appraiser, but the reappraisements by a general appraiser and a board of general appraisers were shown to be void, *Held*, that the value found by the local appraiser and not the invoice value should be taken as the dutiable value.

In absence of proof to the contrary it will be assumed that the appraisal of merchandise by a local appraiser was performed according to the statutory requirements.—*U. S. v. Curnen* (C. C. A.), T. D. 27262.

CERTIFICATE OF APPRAISING OFFICER.—The certificate of the appraising officer is the legal evidence of appraisal, and where such officer fails to certify on the invoice in writing the facts found by him, in the manner prescribed by articles 1246 and 1266, Customs Regulations, 1899, he has not performed the

appraisement contemplated by section 2950, Revised Statutes, and section 13, customs administrative act of 1890.

ILLEGAL APPRAISEMENT.—An appraising officer advanced the value of imported merchandise, but the appraisement was not in writing and notice of advance was not given to the importers; so that they were deprived of their right to demand reappraisement within two days after the appraisement. *Held*, that the appraisement was invalid and did not afford a proper basis for the forfeiture of the merchandise for undervaluation as provided in section 7, customs administrative act of 1890, as amended by section 32, tariff act of 1897.

RIGHT OF REAPPRAISEMENT.—The fact that goods are seized for undervaluation does not deprive the consignee or owner of the right of reappraisement.—*The Lace House v. U. S. (C. C. A.), T. D. 26970.*

Appraisement—Value at Time of Importation.—A general appraiser, taking account of the shrinkage in weight as shown by the difference between the landed weight and the invoice weight of certain hides, advanced their value upon the theory that by reason of their shrinkage they were of greater value than at the time they were shipped, and that it was the condition of the hides at the time they were imported into the United States, rather than at the time they were exported from the foreign country, that duty should be collected upon *Held*, that in doing this the general appraiser did not proceed upon a wrong principle.—*T. D. 26956 (G. A. 6247).*

Appeal for Reappraisement After Liquidation.—The collector's right to apply for reappraisement, under section 13 of the customs administrative act, is not sacrificed by a liquidation in accordance with the original appraisement, and a reliquidation within one year from the date of entry, based upon an advance in value of the goods upon reappraisement, is valid, notwithstanding the collector's appeal was taken subsequently to the original liquidation.—*T. D. 26749 (G. A. 6162).*

Value Upon Which Ad Valorem Duty Should be Assessed.—It is the final action of a duly authorized appraising officer which fixes the dutiable value of imported merchandise. The collector is as much bound by this action as are the importers. In liquidating an entry of merchandise subject to ad valorem duty, the collector must ascertain the amount of duty by applying the rate which the law provides to the value as stated in the invoice, unless the same is raised upon entry or by an appraising officer, and then to the value as stated in the entry or in the final appraisement.

Certain imported merchandise subject to an ad valorem duty was entered at an invoice value of 400 lire and advanced by the local appraiser to a value of 600 lire. An appeal was taken to a general appraiser, who found that the value was that stated in the invoice, but reported that the price paid was 600 lire, and hence the invoice was fraudulent. The goods were seized, and released upon the payment of a fine equal to the amount of duty. Duty was then assessed upon the merchandise upon the value of 600 lire. *Held*, that 400 lire being the market value as found by the last appraisement, duty should have been assessed upon this amount.—*T. D. 25970 (G. A. 5896).*

Items Not Appealed on Are Not Subject to Reappraisement.—The jurisdiction of appraising officers in cases of reappraisement extends only to those items on the invoice as to which an appeal has been prosecuted. If they appraise other items not appealed on, their action is null and void and may be challenged by protest.—*T. D. 25336 (G. A. 5694).*

Regularity of Appraisement.

APPAISEMENT WITHOUT SAMPLES.—As a general rule, an appraisement of merchandise made without an inspection of the goods by the appraising offi-

cers is irregular and void. *U. S. v. Loeb* (107 Fed. Rep., 692; 46 C. C. A., 562).

EXAMINATION OF SAMPLES.—It is not, however, necessary that every article in an entire case or importation be examined. An appraisement made upon an inspection of fair samples is valid. *Gibb v. Washington* (10 Fed. Cas., 288).

CORRECTION OF ITEM OF DISCOUNT.—It seems that a reappraisement may be made without a reexamination of the goods where the matter in dispute relates only to a mere discount or commission on the invoice which can be corrected without an inspection of the merchandise. *U. S. v. McDowell* (21 Fed. Rep., 563).

IRREGULAR APPRAISEMENT CURED BY LAWFUL REAPPRAISEMENT.—Though an original appraisement may have been irregular, yet its defects are cured by a lawful reappraisement. *Burgess v. Converse* (4 Fed. Cas., 726), affirmed in 18 Howard, 413.—T. D. 25128 (G. A. 5615).

Liquidation When Appeal for Reappraisement is Pending.—When a case is properly pending on appeal before the board of reappraisement, under the provisions of section 13 of the customs administrative act, it is error for the collector to attempt to make a liquidation of the entry, and his action in so doing is void.—T. D. 23453 (G. A. 5058).

Decisions of Quorum of Board of Review.

DECISION MADE BY TWO GENERAL APPRAISERS.—A full board of review, constituted under section 13 of the customs administrative act of June 10, 1890 (26 U. S. Stat., 131), consists of three general appraisers; but a quorum of such board may consist of only two members, and a decision made and signed by such quorum of two is regular, legal, and binding on all interested parties.

VALUATION NOT REVIEWABLE.—Where goods described on an invoice as of the same kind and value are appraised by a board of review at different market values, such decision is final and conclusive, in the absence of fraud or irregularity in the proceedings.—T. D. 21785 (G. A. 4604).

Commission Added, to Make Market Value.

POWER OF APPRAISING OFFICERS.—It is the right and duty of appraising officers to inquire into the real nature and rightfulness of so-called commissions, or other charges, claimed by the importers to be nondutiable.

Where the appraiser, in order to make market value, disallows a certain discount claimed to be a commission, it must be assumed that it was not arbitrarily rejected, but was taken as the amount of the advance deemed necessary to "make market value."

REMEDY OF IMPORTER.—In such case the remedy of the importer is by appeal for reappraisement, under section 13, act of June 10, 1890. *U. S. v. Kenworthy* (68 Fed. Rep., 904), *Wanamaker v. Cooper* (69 id., 329), and the decision of the Circuit Court of Appeals, Second Circuit, in *U. S. v. Hermann*, of December 7, 1898 (not yet reported), followed.—T. D. 20683 (G. A. 4354).

Invoice Values Advanced by Collector.—Eight importations of merchandise, made by the same importer on separate steamers and at different times, were duly appraised by the local appraiser and the entries liquidated by the collector, who, however, called for reappraisements on two of the lots, which reappraisements were duly held by a general appraiser, who advanced the values of the goods. The collector then reliquidated the entries covering these two lots, and also those covering the remaining six lots, although no appeal had been taken from the local appraiser's valuation thereof, basing his action in every instance on the return made by the general appraiser, and on the fact that the goods were of the same general character. Held, that the collector's action was irregular and illegal as to the six lots not passed on by

the general appraiser; and that an appraisement of imported merchandise made by a local appraiser in a case of which he has jurisdiction is conclusive on all parties, unless an appeal is taken therefrom in the manner prescribed by law.

The collector is not an appraising officer, and can not act as such, either with or without the consent of the local appraiser.

Notice of a reappraisement must be given to an importer, and he must be afforded such opportunity as enables him to give his views and make his contention in respect to the value of his goods. *Origet v. Hedden* (155 U. S., 228; 15 Sup. Ct. Rep., 92) followed.—T. D. 18617 (G. A. 4015).

Verbal Request for Reappraisement.—A verbal request for reappraisement is not sufficient.—T. D. 16569 (G. A. 3265).

Protest Against Appraised Value.—The contention of the importers seems to be that the addition made by the appraiser to the invoice value of the merchandise, which was based on the excess of quantity ascertained by actual measurement, was unauthorized, because the goods were bought and paid for by the piece, and at the prices stated in the invoice, irrespective of the actual number of yards or aunes contained in them.

The addition made by the appraiser was clearly one to the market value of the goods and nothing more. His ascertainment of market value, if erroneous, could be reviewed only in the mode prescribed by section 13 of the customs administrative act, which is by calling for a reappraisement of the merchandise. It can not be challenged by a protest which at most asserts the illegality of the appraisement on the alleged ground that excess of quantity over the invoice measurement did not justify the additions to market value as made by him. In *re Arenstein & Wolfers* (G. A. 1547); *Passavant v. U. S.* (148 U. S., 214).—T. D. 15582 (G. A. 2842).

Reappraisement by Local Appraiser.—Invoice sent to appraiser May 17, and on May 21 he made his appraisement. On June 6 the collector returned the invoice to the appraiser who made a new appraisement. *Held*, that the only remedy of the collector was to order a new appraisement by a general appraiser and that the second appraisement was void.—T. D. 15320 (G. A. 2754).

Clerical Error in Invoice Value.—Merchandise invoiced at 9s. a yard, which is claimed to be a clerical error and that it should be 8s. 9d. *Held*, that the remedy was through reappraisement through a corrected invoice.—T. D. 14754 (G. A. 2476).

Free Entry of Samples Without Value.—When the importer claims that samples are free as having no commercial value, the remedy is an appeal for reappraisement. T. D. 12645 (G. A. 1294); T. D. 13330 (G. A. 1710).—T. D. 13677 (G. A. 1915).

Value on Entry of Stone Ballast.—Stone ballast imported, invoiced, and entered at \$100. The importer claimed that it had no commercial value and was free. *Held*, that the finding of the appraiser as to value is final, unless a reappraisement is demanded and that the collector could not but levy the duty.—T. D. 13660 (G. A. 1898).

Stone ballast presented to the consignee of the vessel was assessed as a non-enumerated unmanufactured article on the valuation as returned by the appraiser, and claimed to be free. *Held*, that there is no provision for the free entry of ballast, that the board has no authority to disturb the value as returned except in the manner prescribed by section 13, act of 1890, and that a reappraisement should have been asked for.—T. D. 12569 (G. A. 1253).

Notice of Advances on Appraisement.—The importer is entitled to notice of advance on appraisement, and where the collector did not mail any notice to the importer and he was not advised of the action of the local appraiser as required by articles 846-849 (1892), T. D. 10162, the irregularity vitiates the proceedings and authorizes the board to reverse the collector.—T. D. 13221 (G. A. 1642).

Reappraisement of Goods Without Invoice.—Where an entry has been made without invoice, under article 328, Regulations 1884, there may be a reappraisement.—T. D. 12536 (G. A. 1220).

Claim for Greater Discount Than That on Invoice.—The invoice specifies a discount of $2\frac{1}{2}$ per cent, but the importer claims that the discount was 5 per cent. *Held*, that the statement on the invoice operates as an admission that the discount was $2\frac{1}{2}$ per cent and also that the remedy was by asking for a reappraisement.—T. D. 12463 (G. A. 1201).

Disallowance of Discount on Cigars.—On the face of the invoice of cigars, dutiable under paragraph 245, act of 1883, there appeared a discount which was disallowed by the appraising officer. *Held*, that the remedy was an appeal for reappraisement and not a protest.—T. D. 12358 (G. A. 1130).

Protests Against Reappraisements.—The decision of the board is final and conclusive as to dutiable value.—T. D. 11986 (G. A. 899).

Power of General Appraisers to Advance Values.—The decision of the local appraiser as to values can not, in any respect, fetter the authority of the general appraiser whose duty it is to review the decision *de novo* and to declare the market value, whether above or below that found in the original appraisement, and whether the appeal for the reappraisement was by the importer or the collector.—T. D. 11537 (G. A. 712).

General Appraiser Not Restricted as to Amount of Advance by the Return of the Local Appraiser.—On reappraisement it is the duty of the general appraiser to appraise the foreign market value without regard to any previous valuation, and the fact that his valuation is higher than that of the local appraiser does not make it illegal.—T. D. 10670 (G. A. 254); affirmed (U. S. C. C.), 49 Fed. Rep., 828.

Protests Against Advances in Value.—Objection to valuation should be made within two days by an appeal for reappraisement and not by protest.—T. D. 10642 (G. A. 226).

Failure to Appeal.—An action can not be maintained against a collector of customs to recover duties alleged to have been illegally exacted in 1892 upon an importation appraised according to law, no reappraisement being asked for and the duties being assessed upon the valuation so arrived at.—*Schoenfeld v. Hendricks*, 152 U. S., 691.

General Appraiser May Advance Value Over That Found by Local Appraiser.—A general appraiser, when reappraising the value of imported merchandise pursuant to the requirements of section 13, act of June 10, 1890, is not constrained at all by the rules that pertain to courts, but may reappraise such merchandise at a higher value than that fixed by the local appraiser, even though such reappraisement be had at the instance of the importer and not at that of the collector. T. D. 11537 (G. A. 712); T. D. 10670 (G. A. 254) sustained.—*In re Megroz* (C. C.), 49 Fed. Rep., 828.

Merchandise With No Open Market Value.—Certain merchandise under reappraisement by the Board of General Appraisers was found by them to have no open market value. They acted properly and legally in the proceeding to

ascertain the foreign market value of the goods by deducting from the wholesale market price at which such merchandise is offered for sale in the United States the necessary expenses of placing it on the market.—*Comacho v. U. S.*, 115 Fed. Rep., 190.

Appraisement Without Examination of Merchandise.—When importers distinctly testified that the Board of General Appraisers made no personal examination or investigation of goods, as required by R. S. 2901, and no opposing evidence was presented, the facts must be regarded as proved, notwithstanding the presumption in favor of the correctness of official action, and the appraisement must be held invalid.

While, as a general rule, the valuation of appraisers is conclusive on all parties, the appraisement may be impeached if the collector proceeded on a wrong principle, contrary to law, or transcended the power conferred by statute or did not comply therewith.—*U. S. v. Loeb*, 107 Fed. Rep., 692.

Appeal to Reappraisement.—Under section 13, act of June 10, 1890, which provides for an appeal to the Board of General Appraisers if the importer is dissatisfied with the valuation, and section 25, which declares that no action shall be had against the collector in any case in which the importer is entitled to appeal under this act, the remedy by appeal from an appraisement is exclusive, and an action can not be maintained against the collector to recover an alleged excess of duties paid on a valuation advanced by an appraiser over the invoice value.—*Loeb v. Hendricks (C. C.)*, 57 Fed. Rep., 568.

Samples on Reappraisement.—On reappraisement proceedings the importer is not entitled to have the whole importation produced before the Board of General Appraisers. The statutes do not seem to require the examination, on appeal, of any larger portion than R. S. 2939 directs shall be sent for examination and appraisement to the local appraiser.—*Renvy et al. v. U. S.*, 121 Fed. Rep., 440.

Right of Appeal.—A reliquidation of duties pursuant to a decision of the Board of General Appraisers does not extend the time for taking an appeal from the liquidation nor give a new right of appeal.—*Stern v. U. S. (C. C.)*, 77 Fed. Rep., 607.

DECISIONS UNDER EARLIER STATUTES PERTAINING TO THE SAME SUBJECT MATTER.

Absence of Importer at Reappraisement.—An importer appealed from an appraisement in 1882. A day in June was fixed for hearing the appeal. The Government not being ready, an adjournment was granted without fixing a day and the importer was informed that he would be notified when the case would be heard. March 19, 1884, notice was sent by letter to him at his residence in Philadelphia that the appraisement would take place at New York on the following day. His clerk replied that the importer was absent in Cuba, not to return before the beginning of May, and asked a postponement until that time. The appraisers replied by telegram that the appraisement was adjourned until March 25. On that day the case was disposed of in the absence of the importer or of any person representing him. *Held*, (1) that the notice of the meeting in March was sufficient; (2) that in view of the neglect of the importer to make any provision for the case being taken up during his absence, and of his clerk to appear and ask a further postponement of the hearing, the court could not say that the appraisers acted unreasonably in proceeding *ex parte* and in imposing additional duties without waiting his return.

A reappraisement of imported merchandise when properly conducted is binding.

When the facts are undisputed in an action to recover money on such reappraisement, the reasonableness of the notice to the importer of the time and place appointed for the reappraisement is a question of law for the court.

Appraisers appointed under R. S. 2930 to reappraise goods constitute a quasi judicial tribunal, whose action within its discretion, when that discretion is not abused, is final.—*Earnshaw v. U. S.*, 146 U. S., 60.

Where appraisers have fixed a time for a hearing and given notice thereof to the parties interested, the refusal to postpone the hearing at the request of one of the parties is within their discretion, and the court will not interfere.—*U. S. v. Earnshaw*, 30 Fed. Rep., 672. *

Competency of Merchant Appraisers.—Where the merchant appraisers did not agree the collector was justified in adopting the report of the local appraiser and discarding that of the merchant appraisers.

The fact that the merchant appraisers were manufacturers of the article under appraisal did not disqualify them.—*T. D. 10761* (G. A. 314).

Date of Decision on Appeal.—The importer is not entitled to notice of the decision of the Secretary upon appeal, and the limitation of 90 days within which the importer may commence an action commences to run from the date of the decision and not from the time the importer may have had knowledge of it.—*Chung Yune v. Shurtleff*, 10 Fed. Rep., 239.

Delivery of Merchandise Pending Reappraisement.—Where, under *T. D. 3663*, a merchant leaves a sum of money with the collector instead of the goods, and an examination is made by the appraisers and the importer binds himself to abide by the result of the appraisal "the same as if the goods had been retained," neither party can take advantage of the delivery as changing the rights of the other.—*Porter v. Beard*, 15 Fed. Rep., 380.

Demand on Importer for Necessary Papers.—Under sections 16 and 17 of the act of 1842 (5 Stat., 548, 563) the power of the Government appraisers was not terminated by returning an appraisal to the collector. When they found it was questioned they had a right to reconsider it; and for this purpose to call on the importer to produce his correspondence, and he could not by taking an appeal exempt himself from the duty of producing it.

The decision of the Government appraisers is final if not appealed from or if an appeal having been taken is waived.—*Bartlett v. Kane*, 16 How., 263.

An appeal from the decision of the official appraisers to that of the merchant appraisers was made by the importers; but on the official appraisers demanding of them the production of all documents connected with the importation they refused to comply with the demand, withdrew the appeal, and paid the duties under protest. *Held*, that the parties by withdrawing their appeal and refusing to produce the papers called for had fixed the correctness of the appraisal.

The appraisers had the right to call for these papers, whether with the view of correcting their own judgment, if erroneous, or of laying them before the merchant appraisers in the event of a prosecution of the appeal.

The refusal to produce papers admitted to be in a party's possession raises the strongest inference that the papers, if produced, would operate against the person holding them.

The act of August 30, 1842, section 17, makes it in such a case as this conclusive proof that the papers when produced would be demonstrative against the pretensions of the party having them in his possession.—*Bartlett v. Kane*, Taney, 186; 2 Fed. Cas., 971.

Discount—Reappraisement.—In the invoice and entry the importer claims that a certain discount had been allowed upon the goods. The discount was allowed and duty paid accordingly. Afterwards the United States claimed that the discount was fraudulently claimed and that no such discount was in fact allowed. In such a case a reappraisement may be made without a reexamination of the goods, the correction of the alleged false discount not being dependent on any inspection of the goods.—*U. S. v. McDowell*, 21 Fed. Rep., 563.

Fees of Merchant Appraiser to be Paid by Government.—To charge the importer with the fees of the merchant appraiser is an unlawful exaction. The expense of reappraisement must be borne by the Government.—*Hedden v. Iselin* (C. C.), 31 Fed. Rep., 266.

The importer upon giving notice of dissatisfaction with an appraisement paid to the collector upon filing such notice a fee of \$10 which had been long required as a condition of proceeding with the reappraisement, in accordance with article 472, Regulations, 1884. The deposit was for the purpose of paying the merchant appraiser for his services, such portion as was not used for that service being afterwards returned. *Held*, (1) that such deposit as a condition of proceeding with the reappraisement was illegal, and if done with the collector's knowledge and sanction was a violation of R. S. 2636; (2) that if paid in pursuance of a well-known and settled requirement and usage, it was not a voluntary payment; (3) that the importers were entitled to prosecute the collector in their own name.

Upon notice by an importer of his dissatisfaction with the appraiser's valuation of goods, a reappraisement by a merchant appraiser is one of the ordinary means of ascertaining the value of the goods for the purpose of determining the duty, and no charge for that service can be imposed upon the importer, directly or indirectly, in the absence of any authority of law. Article 472, Regulations, 1884, is to that extent illegal and void.

R. S. 2725 has no application to ports where there is a stated appraiser. *Semble*, in such case compensation is provided by R. S. 2733.

It is not necessary that there should always be a protest accompanying the payment of money which is paid in order to obtain the performance of a duty or the allowance of a right to render the payment an enforced payment. Where there is settled and well-known course of business requiring such payment, which has been continued for a considerable time, and the fact is known that the right is not accorded and the proceedings are not had without such payment, a payment made under such circumstances may be just as much a constrained and coerced payment as if it were the first in the series and made upon an express protest.—*Iselin v. Hedden*, 28 Fed. Rep., 416.

Finality of Decisions of Merchant Appraisers.—An appraisement by merchant appraisers appointed by the collector to appraise and value goods, in case of dissatisfaction of the importer with the official appraisement, is final and must be deemed and taken to be the true value of the goods, and the duties must be levied upon them accordingly. The law does not require that the appraisement of the merchant appraisers should have all the formalities and precision of a common-law award, nor is it necessary to set forth in it the principles upon which they acted nor the evidence by which they were governed. If it could even be proved that there was evidence before them sufficient to show that their decision was against the weight of evidence, yet their judgment could not on that account be reversed; there is no tribunal authorized to review it; the law makes it final as to the question of value. The appraisement must speak for itself and be construed by its own language; if its validity is to be impeached by anything outside of the award, it must be by testimony showing

that the question referred was not decided or that there was some misconduct on the part of the appraisers.—*Tucker v. Kane*, Taney, 146; 24 Fed. Cas., 268.

Legality of Appraisalment.—The valuation of merchandise made by customs officers under the statutes for the purpose of levying duties thereon is in the absence of fraud on the part of the officers conclusive on the importer.

Sections 2931 and 3011, Revised Statutes, do not relate to alleged errors in the appraisalment of goods, but to the rate and amount of duties imposed upon them after appraisalment.—*Hilton v. Merritt*, 110 U. S., 97.

The general rule that the value of merchandise made by a customs appraiser is conclusive if no appeal be taken therefrom to merchant appraisers is subject to the qualification that if the appraisers proceed upon a wrong principle, contrary to law, and this be made to appear, his appraisalment may be impeached.

A statute which requires the dutiable value of goods to be reached by adding to the market value of the goods the cost of transportation and other defined charges does not authorize the appraiser to reach the amount of such charges by an estimate of percentage, and an importer who pays duties on an importation thus calculated may, in an action brought to recover such as were illegally exacted, show wherein such estimate or percentage was illegal and excessive.

The compulsory insertion by the importer of additional charges upon an entry and invoice, which necessarily involves the payment of increased duties, makes the payment of those duties involuntary.

The payment of money to a customs official to avoid an onerous penalty, though the imposition of that penalty may have been illegal, is sufficient to make the payment an involuntary one.—*Robertson v. Frank Bros. & Co.*, 132 U. S., 17.

Market Value of Sugar.—Where, in a writ of error, exception was taken to the admission of the testimony of merchants and appraisers in Boston in respect to the market value of sugars in Cuba, it was held that the market value being a question of opinion as well as of fact such testimony was admissible as being in the nature of evidence by experts and of the same degree as the evidence of merchants in Cuba.

Invoices of shipments in July and August (this shipment being made in May) are admissible to show the market value of sugar.

The phrase "actual cost" in the revenue act of 1799 means the actual price paid in a bona fide purchase and not the market value.

The agent of the claimants having assumed in his oath to the invoice or entry of shipment the position of a purchaser, he could not avail himself of the defense that he was not a purchaser but a producer or manufacturer.—*Alfonso v. U. S.*, 2 Story, 421; 1 Fed. Cas., 395.

Merchant Appraiser.—The merchant appraiser must be a person familiar with the character and value of the goods.—*Oelbermann v. Merritt*, 123 U. S., 356, 366.

A merchant appraiser is a quasi judicial officer and will not be permitted to testify to his own neglect of duty. To permit the awards of the important tribunal which Congress has established to appraise imported merchandise to be overthrown on the assertion of one of its members years afterwards is clearly against public policy. It is putting a premium upon incompetency, inaccuracy, and fraud.—*Oelbermann v. Merritt*, 19 Fed. Rep., 408.

Where a collector of customs, under section 2930, Revised Statutes, selects a merchant appraiser to examine and appraise imported merchandise, it is his duty to choose some one possessing the statutory qualifications as to familiarity with the goods to be appraised; and it is to be presumed that he did his duty in that regard.

Evidence creating a mere uncertainty, but not showing affirmatively the absence, in a merchant appraiser, of the statutory qualifications, is not sufficient to rebut the presumption that the collector in appointing him paid due regard to the requirements of law.—*Erhardt v. Ballin* (C. C. A.), T. D. 27720.

A merchant appraiser is not an officer within the meaning of the Constitution.—T. D. 10679 (G. A. 263).

Oath of Merchant Appraisers.—The reappraisal was illegal and void, because the merchant appraiser was sworn by the official appraiser.

The rule that the acts of a de facto public officer are valid in regard to third persons and can not be questioned collaterally, although he has to give a bond and take an oath when required, is restricted to those who hold office under some degree of notoriety, or are in the exercise of continuous official acts, or are in the possession of a place which has the character of a public office.—*Vaccari v. Maxwell*, 3 Blatchf., 368; 28 Fed. Cas., 862.

A deputy or acting collector has power to appoint a merchant appraiser on a reappraisal and to administer the oath to him.

All objections to the qualifications of the merchant appraiser must be made at the time of the reappraisal. If not so made, they will be deemed to have been waived.—*Falleck v. Barney*, 5 Blatchf., 38; 8 Fed. Cas., 974.

Objection to Merchant Appraiser.—Where the answer alleged the demand for reappraisal, and that the collector appointed to act on the reappraisal, a person who was not "a discreet and experienced merchant," was a personal enemy of the defendant and not competent to act impartially, that the collector was notified of the defendant's objections, who refused to remove such person; the reappraisal was thereafter made by him with the general appraiser, but the answer contained no averment of protest and appeal from the liquidation based upon such reappraisal, held on demurrer that the collector had jurisdiction of the proceedings, that the irregularities alleged were at most errors in the proceedings, reviewable by the Secretary on protest and appeal, and that the answer was insufficient for want of any averment thereof.—*U. S. v. Earnshaw*, 12 Fed. Rep., 283.

The act of March 3, 1851 (9 Stat., 629), section 3, in regard to reappraisals of imported goods, applies to all goods, as well as those imported by their manufacturer as those imported by their purchaser.—*Bannendahl v. Redfield*, 4 Blatchf., 223; 2 Fed. Cas., 763.

Under the revenue system of the United States the question of dutiable value of imported articles is not to be tried before the appraisers as if it were an issue in a suit in a judicial proceeding. Such is not the intention of the statutes. The practice has been to the contrary from the earliest history of the Government, and the provisions of the statute in this behalf are open to no constitutional objection. It appeared in this case that the merchant appraiser examined the goods sufficiently to satisfy him that they were the same order or goods that his firm imported. *Held*, that this established the familiarity required by the statute and placed his qualifications as an expert beyond a reasonable doubt.

If the importer is afforded such notice of a reappraisal and hearing as enables him to give his views and make his contention in respect to the value of the goods, he can not complain even though he be not allowed to be present throughout the proceedings on the reappraisal, or to hear and examine all the testimony, or to cross-examine the witnesses.

The remedy of an importer on a question of valuation is to call for a reappraisal; though, if his contention is that a jurisdictional question exists, he

may make his protest, pointing out the defect, and stand upon it as the ground for the refusal to pay the increased duties.

Reappraisers may avail themselves of clerical assistance to average appraisements given by different experts when it appears that it was for their guidance only.—*Origet v. Hedden*, 155 U. S., 228, 234, 236, 238.

An appraisement is conclusive upon the fact whether the appraisement of the goods imported was or was not made, as the act of March 3, 1851, section 1, directs that it shall be "as of the actual market value or wholesale price thereof in the principal markets of the country from which the same shall have been imported." If the importer alleges that it was not so made, and is dissatisfied, his remedy is by appeal to the merchant appraisers. He can not use the fact in a suit to recover the money paid as duties under protest.

While the goods remain in the ownership of the importer the collector has a reasonable time to fix their dutiable value, and his right to reappraise them under the act of May 28, 1830, in any case where, from neglect or want of evidence on the part of the appraisers, the appraisement has been under the proper dutiable value is not lost merely because they have gone through one form of appraisement and been delivered to the importer with a memorandum on the invoice that the entry was "right"; but the court expresses no opinion on the case where the goods had passed beyond the reach of the collector.—*Iasigi et al. v. The Collector*, 1 Wall., 375.

Reappraisement After Liquidation.—Merchandise was delivered to an importer after he had paid the duties on it as first liquidated or estimated on its entry. Subsequently the collector recalled the invoice, the local appraiser increased the valuation, there was a reappraisement by the general appraiser and a merchant appraiser, and a new liquidation which increased the amount of duties. The importer paid the amount under protest and appealed to the Secretary (who affirmed the action of the collector) and then brought suit against the collector. *Held*, that under R. S. 3011 the action would not lie because the payment was not made to obtain possession of the merchandise.—*Porter v. Beard*, 124 U. S., 429.

Reappraisement by a Merchant Appraiser.—On a reappraisement by a merchant appraiser and a general appraiser under R. S. 2930, the valuation of goods entered in March, 1886, was raised and the importer paid additional duties, for which he sued after protest and appeal. At the trial the plaintiff put in evidence chapter 3, part 3, articles 447 to 506, and chapter 5, part 8, articles 1339 to 1410, and 1415 to 1417, of Treasury Regulations of 1885, being instructions of June 9 and 10, 1885. The importer had asked for the reappraisement, and the collector selected the merchant appraiser. He took the prescribed oath. The defendant had a verdict in respect to the additional duties under the direction of the court, and the importer had a judgment in respect of another matter. On a writ of error held (1) that the Treasury instructions gave the importer all the rights to which he was entitled and were not repugnant to the provisions of R. S. 2902 and 2930, which required the use of all reasonable ways and means in appraising, and the proper rights of the importer were accorded to him in this case; (2) the question of the dutiable value of the merchandise was not to be tried before the appraisers as if it were an issue in a suit in a judicial tribunal; (3) in a suit to recover duties paid under protest the valuation of the merchandise made by the appraisers is, in the absence of fraud, conclusive on the importer, and the question as to the actual value of the merchandise can not be tried; (4) the merchant appraiser was not an officer within the meaning of article 2, section 2, of the Constitution, so as to require him to be appointed by the President, or a court

of law, or the head of a department; (5) R. S. 2930, making the decision of the appraisers final, is not unconstitutional.

A merchant appraiser is an expert selected as emergency arises. His appointment is not one to be classified under the civil-service law; he is not to be appointed upon a competitive examination, nor does he fall within the provisions of the civil-service law. He is not a "clerk," nor an "agent," nor a "person employed" in the customs department, within the meaning of the civil-service act; nor is he an officer of the United States required to be appointed by the President, or a court of law, or the head of a department. The statute does not use the word "appoint," but uses the word "select." His position is without tenure, duration, continuing emolument, or continuous duties, and he acts only occasionally and temporarily. Therefore, he is not an "officer" within the meaning of section 2, article 2, of the Constitution.—*Auffmordt v. Hedden*, 137 U. S., 310, 326, 327.

The importer has a right to be present when the reappraisers view his goods, to see that they are his goods, to illustrate them and exhibit them in any manner he sees fit, and to present to the appraisers any views he has.

The reappraisement is an appraisal on view, and the reappraisers have the power to ascertain the value of the merchandise by reasonable ways and means and to determine what witnesses, if any, it is proper for them to examine.

The merchant appraiser is not an "officer" within the meaning of article 2, section 2, of the Constitution.—*Auffmordt v. Hedden*, 30 Fed. Rep., 360.

Samples Not Retained.—Heavy goods were appraised upon the wharf and delivered to the importer upon the payment of the duties as invoiced and the execution of a bond to return the goods, if required, within 10 days, no samples being retained and no demand being made within the 10 days. Afterwards the valuation was raised and an additional duty was assessed upon the goods by the appraisers' return and the importer notified thereof, who made a demand for reappraisement. A merchant appraiser having been appointed and not reporting, and the general appraiser having stated that, owing to the lack of samples, a reappraisement was impossible, a liquidation was made in accordance with the original return. *Held*, that the liquidation was invalid and no suit was maintainable for the balance shown thereby.—*U. S. v. Phillips* (D. C.), 46 Fed. Rep., 466.

Sugar—Appraisement by Sample.—Where sugar was appraised by samples which were drawn from the packages by the person called the sampler and were delivered by him to the local appraisers, and the examination was made by them without having seen the packages, held, in the absence of any objection by the importers as to the manner of drawing the samples or to their identification, that it was a substantial compliance with the requirements of Congress authorizing the appraisal in such a case to be made by samples.

And where, upon appeal to merchant appraisers, the samples were, after the decision of the local appraisers, placed in the depository in the appraisers' department and were there kept until the meeting of the merchant appraisers and were then produced by one of the local appraisers, and no objection to the identity of the samples being then made by the importers, held that all objections which might have been taken to the appraisement were waived by the importers.

If the samples are fairly selected from one in ten of the packages and are fully identified, it is of no importance whether they were drawn from the packages by the appraisers themselves or by the official sampler of the appraisers' department.—*Yznaga v. Peaslee*, 1 Cliff., 493; 30 Fed. Rep., 900.

Validity of Appeal to Reappraisal.—An appraisal of goods by the public appraisers is final and conclusive unless the importer gives to the collector an absolute and unconditional notice of his dissatisfaction with such appraisal.

Where the notice given by the importer was that the appraisement was not satisfactory and that "if desired" such evidence and statements would be produced to the collector as could be furnished to satisfy him of the correctness of the invoice value, held that this was a conditional notice and was either not an appeal from an appraisal or was an abandonment of the appeal and that the appraisal was final and conclusive.

If on an appeal from an appraisal a collector illegally refuses to order a reappraisal, still the appraisal is not set aside by the appeal and is conclusive until a reappraisal is in fact made, and the only remedy against the importer is an action against the collector for his breach of duty.

A collector has power, with the sanction of the Secretary, to appoint as many deputies as may be necessary, and such deputies, unless restricted, are necessarily clothed with the power which their principal has. Whenever an oath is required to be administered by a collector, a deputy collector may administer it. (In this case the protest stated that "the reappraisers were not sworn by you.")—*Schmaire v. Maxwell*, 3 Blatchf., 408; 21 Fed. Cas., 700.

Where the invoice value of iron was raised by the official appraisers, and duty on the increase in value and a penalty for undervaluation were imposed, and the importer served on the collector a written notice protesting "against the said increased appraisement and against the exaction of said increased duty and penalty," but was at the same time asked if he desired an appraisement by merchant appraisers, under section 17, act of August 30, 1842, answered that he did not, or did not ask one, and did not offer the fees for a reappraisal, held that if the protest might have amounted to notice of dissatisfaction with the appraisement under said section, had the notice been delivered without qualification, yet the assertion of the importer at the time that he did not ask a reappraisal took from it that effect.

The importer was bound to offer the appraisers fees for reappraisal in order to put the collector in the wrong for not ordering one, and therefore the appraisement by the official appraisers was conclusive as to value.—*Fielden v. Lawrence*, 3 Blatchf., 120; 9 Fed. Cas., 27.

1913 N. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, or upon merchandise on which duty shall have been assessed, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within thirty days after but not before such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within fifteen days after the payment of such fees, charges, and exactions, if dissatisfied with such decision imposing a higher rate of duty, or a greater charge, fee, or exaction, than he shall claim to be legally payable, file a protest or protests in writing with the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. Such protest shall be deemed to be finally abandoned and waived unless within thirty days from the date of filing thereof the person who filed such notice or protest shall have deposited with the collector of customs a fee of \$1 with respect to each protest. Such fee shall be deposited and accounted for as miscellaneous receipts, and in case the protest in connection with which such fee was deposited shall be finally sustained in whole or in part,

such fee shall be refunded to the importer, with the duties found to be collected in excess, from the appropriation for the refund to importers of excess of deposits. No agreement for a contingent fee in respect to recovery or refund under protest shall be lawful. Compliance with this provision shall be a condition precedent to the validity of the protest and to any refund thereunder, and a violation of this provision shall be punishable by a fine not exceeding \$500, or imprisonment for not more than one year, or both.

- 1913 Upon such payment of duties, protest, and deposit of protest fee, the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of nine general appraisers, for due assignment and determination as provided by law; such determination shall be final and conclusive upon all persons interested therein, and the record shall be transmitted to the proper collector or person acting as such, who shall liquidate the entry accordingly, except in cases where an appeal shall be filed in the United States Court of Customs Appeals within the time and in the manner provided for by law.

SEC. 28.

- 1909 Subsec. 14: That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within fifteen days after but not before such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within fifteen days after the payment of such fees, charges, and exactions, if dissatisfied with such decision, give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. Upon such notice and payment the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of nine general appraisers, for due assignment and determination as hereinbefore provided; such determination shall be final and conclusive upon all persons interested therein, and the record shall be transmitted to the proper collector or person acting as such, who shall liquidate the entry accordingly, except in cases where an application shall be filed in the United States Court of Customs Appeals within the time and in the manner provided for in this Act.

AN ACT To amend an Act entitled "An Act to simplify the laws in relation to the collection of the revenues," approved June tenth, eighteen hundred and ninety, as amended by the Act entitled "An Act to provide revenues for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven.

- 1908 SEC. 14. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within fifteen day after but not before such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within fifteen days after the payment of such fees, charges, and exactions, if dissatisfied with such decision, give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. Upon such notice and payment the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of three general appraisers, which shall be on duty at the port of New York, or to a board of three general appraisers who may be designated by the Secretary of the Treasury for such duty at that port or at any other port, which board shall examine and decide the case thus submitted, and their decision, or that of a majority of them, shall be

final and conclusive upon all persons interested therein, and the record shall be transmitted to the proper collector or person acting as such, who shall liquidate the entry accordingly, except in cases where an application shall be filed in the circuit court within the time and in the manner provided for in section fifteen of this Act: *Provided, however, That the board of three general appraisers, or a majority of them, who decided the case may, upon motion of either party, within thirty days next after their decision, and not afterwards, grant a rehearing of said case when, in their opinion, the ends of justice may require it.*

1908

The general board of nine general appraisers shall have power to establish from time to time such reasonable rules of practice, not inconsistent with the law, as may be deemed necessary for the conduct of their proceedings and of the proceedings of the said board of three general appraisers, and to assign or reassign any case to any of such boards of three at any time before promulgation of decision, in order to secure uniformity of decision.

Approved May 27, 1908.—T. D. 29044.

SEC. 14. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within ten day after "but not before" such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within ten days after the payment of such fees, charges, and exactions, if dissatisfied with such decision, give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. Upon such notice and payment the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of three general appraisers, which shall be on duty at the port of New York, or to a board of three general appraisers who may be designated by the Secretary of the Treasury for such duty at that port or at any other port, which board shall examine and decide the case thus submitted, and their decision, or that of a majority of them, shall be final and conclusive upon all persons interested therein, and the record shall be transmitted to the proper collector or person acting as such, who shall liquidate the entry accordingly, except in cases where an application shall be filed in the circuit court within the time and in the manner provided for in section fifteen of this Act.

1890

DECISIONS UNDER THE ACT OF 1913.

Protest Fee.—The requirement of payment of protest fee in paragraph N of section 3 of the act of 1913 does not apply to cases in which the right to protest accrued under the act of 1909.

The right to protest having accrued under the act of 1909 the saving clause of paragraph S of section 4 of the act of 1913 declaring that the repeal or modification of existing laws shall not affect any right accrued, and that all rights under former laws may be enforced in the same manner as if said repeal or modification had not been made, entitles the protestant to proceed without new burdens not imposed by the former act, citing *Bechtel v. U. S.* (101 U. S., 597).—*U. S. v. Brown & Rouse* (Ct. Cust. Appls.), T. D. 35922; G. A. Ab. 38205 affirmed.

APPLICATION OF EXCESS DEPOSIT IN THE HANDS OF THE COLLECTOR.—Money deposited with the collector by a protestant as a protest fee under the provisions of paragraph N of section 3 of the act of 1913 in excess of the amount lawfully required should not be applied by the collector as payment of a fee on another protest unless he is especially directed so to do by the protestant making the deposit.

WAIVER OF TENDER.—The law does not require a man to do an unnecessary thing, and where the tender of performance or payment is essential to the establishment of a right, and it is well and generally known that the tender would be refused and the right denied, that tender is waived and is unnecessary to the establishment of that right. *Hills v. Exchange Bank* (105 U. S., 319); *U. S. v. Lee* (106 U. S., 196); *Bank v. Hagner* (1 Peters, 455).

WAIVER OF PROTEST FEE.—It being well known that the collector would not accept a protest fee on certain classes of protests, the offer or tender of such fee was unnecessary to the validation of such protests.

ARBITRARY ACTS OF THE COLLECTOR.—The collector can not, by arbitrarily refusing the fee required by law upon the filing of a protest, deprive the protestant of his right, even though the collector's action is the result of a mistaken interpretation of the law. *U. S. v. Legg* (105 Fed., 930); *Courtin, Golden & Co.'s case*, G. A. 5293 (T. D. 24265).—T. D. 34927 (G. A. 7641).

Where an importer paid \$35 fees which he intended to apply on three protests, and in tendering the payment did not mention the number of the protest here in question (one of the three), *Held*, that such tender was unnecessary, for the reason that, under the rule established and made known by the department, tender in that form would not have been received. *Swift v. U. S.* (111 U. S., 30) and *U. S. v. Lee* (106 U. S., 202) cited.—T. D. 34926 (G. A. 7640).

Protest Covering Two Entries With the Same Rate of Duty.—A protest may cover one or more entries of goods described in more than one invoice. Paragraph N of section 3, tariff act of October 3, 1913, relative to protests, was framed in view of a practice in the department, confirmed by the courts extending over many years, by which a single protest covered more than one entry. The words "claim in writing" appearing there instead of "protest in writing" can not be taken to alter a practice so established and so recognized.—*U. S. v. McCoy Co. (Ct. Cust. Appls.)*, T. D. 34445; (G. A. 7515) T. D. 33981 affirmed.

Contingent Fee.—The collector in transmitting the protest to the Board of General Appraisers reported that no evidence had been submitted that no agreement for a contingent fee dependent upon a recovery or refund thereunder had been entered into. Subsection N of section 3 of the tariff act of 1913 contains the following provision: "No agreement for a contingent fee in respect to recovery or refund under protest shall be lawful. Compliance with this provision shall be a condition precedent to the validity of the protest and to any refund thereunder, and a violation of this provision shall be punishable by a fine not exceeding five hundred dollars or imprisonment for not more than one year, or both." *Held*, that under this provision of the statute the protestant was not required, as a condition precedent to the validity of his protest, to affirmatively prove to the collector that no agreement for a contingent fee had been made dependent upon a recovery or refund thereunder, nor was it necessary to prove this fact on the trial in order to give the Board of General Appraisers jurisdiction to hear and determine the issue raised by the protest, in the absence of any question of jurisdiction having been raised by the Government. The fact that no such unlawful agreement was made must be presumed. *Ab. 33720* (T. D. 33778); *Lawder v. Stone* (187 U. S., 281); *U. S. v. Passavant* (169 U. S. 16); *U. S. v. Klingenberg* (153 U. S., 93); *Shaw v. U. S.* (122 Fed., 443); *Am. & Eng. Enc. of Law* (vol. 22, p. 1280); *Gaines v. New Orleans* (6 Wall., 642); and 1 *Greenleaf on Evidence* (secs. 34, 38) cited.—T. D. 34306 (G. A. 7547).

Protest Against Reliquidation.—There is a preponderance of authorities to the effect that a voluntary reliquidation of an entry by the collector which

results in a change in the rate or amount of duty is, for the purpose of protest, equivalent to an abandonment of the previous liquidation and reopens the whole entry. *G. A. 5406 (T. D. 24623)* and cases there cited.—*T. D. 35823 (G. A. 7795)*.

Timeliness of Protest.—A protest filed several months after liquidation, but within 30 days after full payment of duties due, is not timely filed within the requirement of paragraph N of section 3 of the tariff act of 1913, that protests shall be filed within 30 days after liquidation, it being held that the importer by voluntarily delaying payment of duties for 9 months after liquidation, during which time the merchandise (entered for consumption) remains in the custody of the Government, can not by that act prolong the period for filing protest beyond the statutory limitation, the facts in this case not giving rise to a situation analogous to that of goods entered under bond for warehousing. *U. S. v. Grossfeld (1 Ct. Cust. Appls., 189; T. D. 31218)* followed, and *U. S. v. Goodsell (84 Fed., 439)* distinguished.—*T. D. 35646 (G. A. 7767)*.

Jurisdiction of the Board.—Where classification has been made by the department under a certain paragraph levying a 25 per cent rate of duty, and, at the instance of a domestic manufacturer, the classification of a particular shipment imported by him has also been made at a higher rate "to the end that the proper classification may be the subject of a judicial determination," and where, at the trial, both the attorney for the Government and for the protestant favor the classification at a higher rate, such a case does not arise as to properly invoke the jurisdiction of this board under the provisions of the customs administrative act of 1890, as amended by the act of October 3, 1913, and the protest must be dismissed.—*T. D. 35561 (G. A. 7744)*.

Protest Signed by Several Protestants—No Community of Interest.—A protest signed by 22 different importers and covering 40 different entries does not meet the requirements of the law relating to protests (par. N, sec. 3, tariff act of 1913). No community of interest is shown in these parties, and to allow importers to proceed jointly to establish their individual rights would be contrary to all rules of pleading.—*T. D. 35191 (G. A. 7696)*.

Verified Protest Not Proof.—The fact that a protest is sworn to does not make it effective as proof to overcome the presumption of correctness which attends the collector's finding, it being merely in the nature of an *ex parte* affidavit.—*T. D. 35132 (G. A. 7683)*.

Protests.—Protests not to be forwarded to the Board of General Appraisers unless filed in time and the fee deposited.—*Dept. Order (T. D. 34257)*.

Sufficiency of Protest.—Many years ago it was said in *Greely's Administrator v. Burgess (18 How., 413)* that a protest was sufficient that stated "that the goods were not fairly and faithfully examined by the appraisers," the court saying "it is sufficient if the importer indicates distinctly and definitely the source of his complaint, and his design to make it the foundation for a claim against the Government."

More recently in *Schell's Executors v. Fauché (138 U. S., 562)* the court said:

A protest which indicates to an intelligent man the ground of the importer's objection to the duty levied upon the articles should not be discarded because of the brevity with which the objection is stated.

This principle, so clearly stated by the Supreme Court, is the ground upon which the protests were held sufficient in the *Hygienic Wood Wool Co.'s case, G. A. 6360 (T. D. 27328)* and in *Carter v. U. S. (1 Ct. Cust. Appls., 64; T. D. 31033)*. The protest in the case at bar, although briefly stated, is so stated as

to indicate to an intelligent man the ground of the importer's objection, and is also sufficient to admit of proof that there were 53 shades broken in transit and that they were broken and worthless before they arrived in the United States. These 53 shades were therefore not imported merchandise at all—hence not dutiable. *Lawder v. Stone* (187 U. S., 281).—Ab. 37946.

Pleading.—A general objection, originating in this court, to the sufficiency of the protest, which may be technically multifarious, but which contains averments covering all the grounds upon which the Board of General Appraisers proceeded, is without merit.

No judgment more favorable to the appellee than the one appealed from will be rendered by this court. *U. S. v. Von Oefele* (4 Ct. Cust. Appls., 284; T. D. 33492).—*U. S. v. Glück & Sons et al.* (Ct. Cust. Appls.), T. D. 37160.

DECISIONS UNDER THE ACT OF 1909.

Sufficiency of Protest.—A protest describing the merchandise alleged to have been improperly classified as “vanity cases, powder boxes, coin purses, or other articles of utility assessed under paragraph 448,” tariff act of 1909, is limited to such articles, and a claim subsequently made for an allowance on “brooches, lavallieres, hatpins, lockets, and buckles, as well as the merchandise in excess returned as plated jewelry,” can not be interpolated therein.

A claim in a protest for a refund on “vanity cases, powder boxes, coin purses, or other articles of utility assessed under paragraph 448” is not broad enough to cover articles of jewelry assessed with duty under the same paragraph, and the protestant can not enlarge such protest at the trial to include articles of jewelry.—T. D. 36003 (G. A. 7831).

The use of “etc.” in the protest is not to be commended, but a nice precision is not required, and as the collector could ascertain without much difficulty the merchandise to the classification of which objection was made, the protest must be held sufficient. *Carter v. U. S.* (1 Ct. Cust. Appls., 64; T. D. 31033).

To ascertain the material of chief value in any manufacture the value of the materials should be determined as of the time when they have reached such condition that nothing remains to be done by the manufacturer except to put them together. The testimony here is not such as to make it possible fairly to determine the element of value in chief in the merchandise. *U. S. v. Meadows* (2 Ct. Cust. Appls., 143; T. D. 31665).—*Bing & Co.’s Successors v. U. S.* (Ct. Cust. Appls.), T. D. 32532; (G. A. 7210) T. D. 31520 affirmed.

A protest under subsection 14 of section 28, tariff act of 1909, is intended to inform the collector of such error as the importer may claim exists in the classification of merchandise. In this case the importers object to the collector’s assessment of duty “under the tariff act of August 5, 1909, at 60 per cent ad valorem on electroliers, vases, and articles of glass and metal, etc.” The words “et cetera” having no meaning in a document of this character, the protests were held to apply only to electroliers and vases and articles of glass and metal.—T. D. 31520 (G. A. 7210); affirmed by T. D. 32532 (C. C. A.), *supra*.

The protest correctly stated the character of the goods as band or belting leather and showed error by the collector in the application of a certain clause in paragraph 451, tariff act of 1909. The collector had before him all the facts calling for reliquidation, for increasing the rate of duty because the goods had been cut into forms, and he was not in any respect misled. The protest was sufficient. *Bowling Green Storage & Van Co. v. U. S.* (3 Ct. Cust. Appls., 309; T. D. 32588) distinguished.—*Michelin Tire Co. v. U. S.* (Ct. Cust. Appls.), T. D. 35507; (G. A. 7603) T. D. 34807 reversed.

Where a protestant bases his claim for classification other than that made by the collector upon a specific provision in a paragraph of the tariff act and names a rate of duty which should have been assessed, such a protest can not be made the basis for recovery under any other provision of the same paragraph naming a different rate of duty, even though it be conceded that the collector's assessment was erroneously made.

A claim that merchandise should have been classified under the provision in paragraph 451, tariff act of 1909, for "band, bend, or belting leather, rough leather and sole leather," and assessed with duty at the rate of 5 per cent ad valorem, is not sufficiently specific to point out to the collector that duty should have been assessed on the merchandise at the rate of 5 per cent as belting leather, with an addition of 10 per cent ad valorem under the proviso in said paragraph 451, for the reason that such leather is cut into forms ready to be made up into articles. *Held*, the protest is insufficient and not a compliance with the provisions of subsection 14 of section 28 of the tariff act of 1909. *Ab. 31884* (T. D. 33325), *Michelin v. U. S.* (5 Ct. Cust. Appls., —; T. D. 34131), *G. A. 7549* (T. D. 34320), *Bliven v. U. S.* (1 Ct. Cust. Appls., 205; T. D. 31239), and *Bowling Green Storage & Van Co. v. U. S.* (3 Ct. Cust. Appls., 310; T. D. 32588) cited.—T. D. 34807 (*G. A. 7603*); reversed in T. D. 35507 (C. C. A.).

The question is one of the sufficiency of a protest. An examination of the language employed shows this to be broad enough, and specific enough as well, to cover all kinds and classes of the goods the duty on which was protested as excessive.—*Dieckerhoff, Raffloer & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 33440; (*G. A. Ab. 30412*); T. D. 32926 reversed.

The protest here not only expressly refers the collector to a paragraph but avers the merchandise to be of a kind that is provided for in that paragraph alone, and claim is made thereunder. The protestant is bound by this specific allegation and his protest could not avail to give him the benefit of yet another and different paragraph of the law.—*U. S. v. Troy Laundry Machinery Co.* (Ct. Cust. Appls.), T. D. 34947; (*G. A. 7565*) T. D. 34457 reversed.

These several protests here were made at different dates, all relating to the same class of merchandise, and in each claim was made under paragraph 415, tariff act of 1909. This claim can not be said to direct the collector's attention to paragraph 420, nor do the facts warrant the opinion that paragraph 420 was in the mind of the importer when he claimed under paragraph 415.—*U. S. v. Sheldon & Co.* (Ct. Cust. Appls.), T. D. 34946; (*G. A. Ab. 35500*) T. D. 34425 reversed.

Payment of Duties.—The Government will not allow foreign goods to be brought into this country and then litigate with the importer as to the amount of duty. The duty, as assessed by the collector, must be paid in any event, not only as a condition of entering the goods, but also as a condition of the right to file a protest. After payment and protest the importer may exercise a right of review under the statutory method and procedure provided therefor.

The assessment and collection of duties is an administrative matter, no notice hearing being necessary where the assessment is in rem and against the foreign goods sought to be entered.

In case of fraud, inability on the part of the Government to proceed in rem against goods fraudulently entered would not prevent it from enforcing the personal liability of the importer in a suit in personam. *U. S. v. National Fiber Co.* (133 Fed., 596) approved.

An importer is not concluded by a reliquidation order made more than one year after the entry where the complaint contains no allegation of the presence of a protest or of a fraud, but may file his plea and be heard in his defense as

In other cases even though he did not file a protest and make the payment required in the case of the original liquidation.

In a suit brought against an importer to recover the amount of duty assessed under a reliquidation made more than a year after the original liquidation, the Government must conform to the general rule of pleading where recovery is sought on the ground of fraud.—*U. S. v. Sherman & Sons Co. (U. S.), T. D. 35500.*

Appraiser's Report as Evidence.—The reports made by local appraisers to collectors concerning merchandise, when they are made within the line of duty, become part of the record in the case, and as such may be considered upon the trial of a protest before the board.

A report made by an appraiser after the lapse of the 30 days fixed by law wherein reports must be made, is extra-official and is not entitled to be considered a part of the record in the case.—*Tower Manufacturing & Novelty Co. et al. v. U. S. (Ct. Cust. Appls.), T. D. 35478; Ab. 37171* affirmed as to part, reversed as to part.

Importations by Parcel Post.—The time in which an appeal may be taken as provided in subsection 14 of section 28 of the tariff act of 1909 begins to run from the date of ascertainment and liquidation of duties.

Ascertainment and liquidation means that the entry has passed regularly through the various divisions of the collector's office and that the duties have been finally ascertained and fixed by the customs officials.

The date such duties are ascertained and fixed is the time from which the right to protest begins to run and not the date of payment of such duties.

A protest relating to a parcel-post entry dated New York, September 1, 1911, received in the customs bureau, New York post office, September 18, 1911, held not filed in time.—*T. D. 35123 (G. A. 7680).*

Protest Not Signed by Importer, Owner, Consignee, or Agent.—A protest signed "William H. Stiner & Son, by Strauss & Hedges, attorneys," against the collector's assessment of duty on merchandise imported by P. E. Anderson & Co., in the absence of evidence that William H. Stiner & Son was either the importer, owner, consignee, or agent of the merchandise, is not such a protest as called upon the collector to review his assessment of duties; nor is such a protest sufficient to invoke the jurisdiction of the Board of General Appraisers for review of the collector's assessment.—*T. D. 35085 (G. A. 7667).*

Presumption of Correctness of Collector's Action.—Upon the coming in of the protest it is the duty of the collector to forward within 30 days the invoice and all the papers and exhibits connected therewith to the board, unless, of course, reliquidation had been considered proper. In this case a memorandum made by the collector subsequent to the lapse of the 30 days can not be deemed the collector's decision. He was without further jurisdiction and such a memorandum does not overcome the presumption of correctness which attaches to the decision already made and entered.

The mere citation to a former decision by the board by the appraiser in his report to the collector is not sufficient to identify the merchandise in the two cases. *U. S. v. Eytinge (4 Ct. Cust. Appls., 266; T. D. 33486).*—*National Hat Pin Co. v. U. S. (Ct. Cust. Appls.), T. D. 34971; G. A. Ab. 34521* *T. D. 34090* affirmed.

Time of Filing Protest Against Duties on Baggage.—On the 18th day of September, 1913, Mrs. ——— entered the port of Buffalo as a resident of the United States returning from abroad. She was required by the collector of the port of Buffalo to pay duty on certain articles coming within the \$100

exemption of paragraph 709 of the tariff act of 1909. She made a baggage declaration, and a deposit was required, as is usual in the administration of customs. The entry was thereafter liquidated, on the 9th day of October, 1913, and duty upon the merchandise assessed. Acting under the advisement of counsel, Mrs. — filed a protest on the 3d day of October, 1913, claiming the exemption.

As the protest in this case was filed before the liquidation of duties, it is dismissed for want of jurisdiction.—T. D. 34696 (G. A. 7593).

Reliquidation.—Where the Board of General Appraisers sustains a protest without holding the merchandise under consideration dutiable at a specified rate of duty and the paragraph under which the protestant claims contains more than one rate, it is the duty of the collector to decide which rate is applicable to the merchandise, and his decision thus made is not a new decision against which protest will lie.—T. D. 34570 (G. A. 7576).

Reliquidation of Entries Inadvertently Included in Schedule.—On authority of the ruling in *Knauth, Nachod & Kuhne v. U. S.* (4 Ct. Cust. Appls., 11; T. D. 33199), the claim in the protests that said paper was properly dutiable at 4½ cents per pound under paragraph 411, tariff act of 1909, was sustained, but only in the cases where the appraiser returned the merchandise as "paper with coated surface, printed." It appears, however, that the three entries now before us—and which, through inadvertence, were included in the numerical schedule of protests attached to and made part of said decision—cover merchandise returned by the appraiser as "paper with coated surface, embossed and printed."

Inasmuch as said decision was expressly limited to merchandise returned by the appraiser as "paper with coated surface, printed," it necessarily follows that the action of the collector in refusing to reliquidate thereunder entries covering merchandise not so returned was in strict conformity with the terms of said decision, and must be affirmed.—Ab. 34874 (T. D. 34219).

Protest, Alteration of.—A protest showing that "626" had been typewritten as the number of the paragraph claimed under, but had been erased and "555" inserted with lead pencil in lieu thereof, is, in the absence of any claim that it had been tampered with, sufficient to claim under paragraph 555.—*Wells, Fargo & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 36903.

Protest—Function Of.—A protest serves the purpose not only of a notice to the collector of alleged errors in his classification or assessment so that he may correct his decision if so minded, but as well the purpose of an appeal to the Board of General Appraisers in case the collector declines or fails to make his decision conform to the protest. And once the limit fixed by the regulations within which the collector must pass upon the protest, namely, 30 days, has expired, the jurisdiction of the Board of General Appraisers attaches and the authority of the collector in the premises is suspended, and this whether the papers have been transmitted or not. *Gulbenkian v. Stranahan* (158 Fed., 836) distinguished.—*U. S. v. Straus & Sons et al.* (Ct. Cust. Appls.), T. D. 34193; (G. A. 7370) T. D. 32581 affirmed.

Time for Filing Protest—Subport.—Where the goods are entered and the original classification and liquidation thereon is had at a subport, which can only be reached by mail from the chief port of the district in from 20 to 30 days, and a reclassification and reliquidation is subsequently had at the chief port, *Held*, that such reliquidation does not become effective, nor the time for protest against such reclassification commence to run, until notice thereof has been received at such subport.—T. D. 34025 (G. A. 7521).

Protest Allowed by Collector Will Not be Reviewed by the Board of General Appraisers.—Protest was filed against the collector's classification of certain codfish, as codfish, dried and salted, in packages containing less than one-half barrel, not specially provided for, at 30 per cent ad valorem under paragraph 270 of the tariff act of 1909, claiming said codfish dutiable at three-fourths of 1 cent per pound under paragraph 273 of said act. On the collector's attention being called to Ab. 27144 (T. D. 32020), the collector sustained the protest and reliquidated the entry at the lower rate of duty claimed in the protest. The department, however, declined to authorize a refund, and directed that the protest be forwarded to the board.

Held, that inasmuch as the decision of the collector protested against was canceled, and a reliquidation had which sustained the protest, which had not been set aside, the protest was improperly transmitted to the board, as it raises no issue, and is therefore dismissed.—T. D. 33999 (G. A. 7518).

Samples Not Shown to be Taken From the Importation.—It was not shown that the sample used by the Government was a part of the importation. The evidence here makes out a prima facie case for the importer and is sufficient to overcome the presumption of correctness attaching to the collector's decision. The merchandise was dutiable as rapeseed oil.—U. S. v. Lang (Ct. Cust. Appls.), T. D. 33916; (G. A. Ab. 31592) T. D. 33263 affirmed.

Payment of Increased Duties Delayed.

JURISDICTION OF GENERAL APPRAISERS.—Under subsection 14, section 28, tariff act of 1909, providing, where merchandise has been entered for consumption, that upon protest and payment of "the full amount of the duties and charges ascertained to be due" the collector shall transmit the papers to the Board of General Appraisers for decision. *Held*, that the collector should withhold the papers till such payment is made, and that in the event of premature transmission to the board the board will be without jurisdiction to decide the case unless and until such payment shall have been made. U. S. v. Tiffany (151 Fed., 473; T. D. 27754, reversing 137 Fed., 971; T. D. 26313).

WAIVER OF PAYMENT.—While delay in the payment of duties is not necessarily fatal to the importers' right of relief in the case of erroneous assessments of duty, all duties and charges in the case of entries for consumption must be paid before the board can acquire jurisdiction of a protest duly made. An officer of the Government can not, by waiving payment of increased duties ascertained to be due on merchandise entered for consumption, confer jurisdiction upon the board or make it legal on the part of the board to enter upon a consideration of the merits. *Tiffany v. U. S.* (153 Fed., 969; T. D. 28057); *U. S. v. Tiffany* (154 Fed., 740; T. D. 28107); *U. S. v. Schefer* (71 Fed., 959); *Grandmange v. Schell* (32 Fed., 655); *Haynes v. Brewster* (46 Fed., 471); *In re Guggenheim Smelting Co.* (112 Fed., 517), and G. A. 5512 (T. D. 24846) cited.—T. D. 33762 (G. A. 7496).

Mail Importations, Board's Jurisdiction Over.—The Board of United States General Appraisers has jurisdiction to review protests relating to mail importations. *General Electric Co. Cases* (4 Ct. Cust. Appls., 287; T. D. 33494) cited.

Paragraph N of section 3 expressly inhibits the filing of a protest before liquidation. Such prematurely filed protest is ineffective.

The addition to the tariff law by paragraph N of section 3 of the words "or upon merchandise on which duty shall have been assessed" extends the jurisdiction of the Board of United States General Appraisers to all decisions of collectors of customs as to the rate and amount of duties whether or not the merchandise was imported and whether or not provision is made for its legal

entry. It is any and every decision of a collector as to the rate and amount of duties that may be protested and reviewed, and not only such a decision as to imported or legally entered merchandise or as to goods for which a certain entry is by statute provided.

A protest filed between the time of the payment at the post office of the estimated duties on a mail importation and the liquidation by the collector is premature and ineffective.—*U. S. v. Mandel Bros.* (Ct. Cust. Appls.), T. D. 37051.

Protest Signed by a Stranger.—A protest must be signed as required by the provisions of the statute, subsection 14 of section 28, tariff act of 1909, with the name of the owner, importer, consignee, or agent of the merchandise, to be a lawful and sufficient protest.

A protest signed by any other party is not valid and sufficient unless it appears from the evidence that the signer had authority to act.—*T. D. 33240* (G. A. 7440).

A Consent Order, when Both Parties Do Not Consent.—The merchandise was classified by the collector as bagging made of jute butts and waste, and was assessed for duty under paragraph 355, tariff act of 1909. The protest claimed alternatively under two paragraphs, to wit, 358 and 480, of that act. On the date set for hearing the Government asked that a consent order sustaining the protest should be entered of record. The protestants objected to this, insisting on a hearing and a decision upon the question of law involved. The board denied this, and, directing a submission of the case without a trial of the issues of fact, sustained the protest. An assessment was ordered under the provisions of paragraph 358. The appeal was taken from the order sustaining the protest.

The order sustaining the protest was not made by the consent of both parties, nor upon the express admission by the Government of any of the facts alleged in the protest. This was not a consent order in the legal acceptance of the term; it was not an order legally following on an express admission of fact by one of the contending litigants. The protestant had the right to show by evidence whether the merchandise belonged to one or the other of the two classes, as alleged in the protest—*American Manufacturing Co. v. U. S.* (Ct. Cust. Appls.), T. D. 33161; (G. A. Ab. 27492) T. D. 32126 reversed.

Protest Against Reliquidation.—It is not shown that the collector's reliquidation was other than in strict compliance with the board's ruling, and the filing of a new protest against such reliquidation can not now be sustained as to goods which were not covered by the first protest. The classification of the goods so omitted became final by the failure of the importers to protest in due time. Note *Smith v. U. S.* (1 Ct. Cust. Appls., 489; T. D. 31527).—Ab. 30712.

Unsatisfactory Record.—The goods were assessed as ceramic colors under paragraph 56, tariff act of 1909. A careful examination of the meager record and proof furnishes no ground for disturbing the decision of the collector or for reversing the decision of the board.—*Reusche & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 32983; (G. A. Ab. 27715) T. D. 32244 affirmed.

The Board's Jurisdiction—Fees and Charges.—Subsection 14 of section 28, tariff act of 1909, gives the Board of General Appraisers jurisdiction to review the decisions of the collectors of customs in two distinct and separate respects: First, as to the rate and amount of duty chargeable upon imported merchandise, including all dutiable costs and charges; second, as to all fees and exactions of whatever character, except duties on tonnage.

The Board of United States General Appraisers has jurisdiction to review the action of the collector in charging certain fees and making certain exactions in connection with the lading of a vessel with articles manufactured in the United States, the exporter thereof having filed claims for drawback of duty paid upon the imported material entering into the manufacture of these articles.—T. D. 32759 (G. A. 7384).

Appropriate Provision to be Named in Protest.—The protest claimed the importation as "bales bagging," to be free under paragraph 644, tariff act of 1909, as paper stock, crude, of every description. It is now admitted the merchandise could not be properly classified as "bagging" under that paragraph. But the collector was directed to that paragraph by the protest and, being accordingly misdirected, the protest was insufficient. *Bliven v. U. S.* (1 Ct. Cust. Appls., 205; T. D. 31239); *U. S. v. Danker & Marston* (2 Ct. Cust. Appls., 462; T. D. 32208).—*Oelrichs & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 32541; (G. A. Ab. 27571) T. D. 32149 affirmed.

Higher Assessment Claimed.

STATEMENT.—The cotton bagging of the importation was classified and assessed at the appropriate rate as bagging for cotton composed of jute, jute butts, or hemp under paragraph 355, tariff act of 1909. It is here undisputed, in fact agreed on, that the importation is a manufacture of vegetable fibers not specially provided for, and it is here conceded to have been dutiable at a higher rate under paragraph 358 of the act in question. The importer appealed against the assessment of the lower rate, and the board assessed the higher rate. The Government contends the importer may not appeal where he has suffered no pecuniary loss.

IMPORTER'S RIGHT TO PROTEST A RATE AS TOO LOW.—The statute, June 10, 1890, gives the importer the right of appeal if "dissatisfied" with the collector's decision. The collector's decision is not final and conclusive against the Government, and under the statute is not to be deemed final and conclusive against the importer. An appeal would have for its object the judicial ascertainment and enforcement of the lawful rate for the just protection of the parties to the proceedings, of the importer as well as of the Government. A review of the legislation and of the judicial constructions the pertinent clause of the statute has received, sustains the right of the importer to appeal. He has a right to have his merchandise correctly assessed. *De Blois & Ballut*, G. A. 2413 (T. D. 14691); *Wakem v. U. S.* (T. D. 25827).—*U. S. v. Schwartz & Co.* (Ct. Cust. Appls.), T. D. 32315; (G. A. 7187) T. D. 31401 affirmed.

Reliquidation on Order of Board Followed by a New Protest.—Where an importer's protest against the inclusion of certain bottle charges in an assessed valuation had been sustained and a reliquidation by the collector ordered, the importer interposed a new protest with the collector, asserting his right to a new assessment on the contents themselves of the bottles and at a lower rate than that which had been originally fixed: *Held*, in the proceedings that ensued on reliquidation the collector made no "decision" from which an appeal would lie; he was acting ministerially, and the importer having failed within the time prescribed by law to protest against the original assessment as to the value of the contents of the bottles and to appeal therefrom, that assessment is res adjudicata.—*Smith & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 31527; (G. A. 6919) T. D. 29884 affirmed.

Timeliness of Filing.—Dropping protest in box at post office does not constitute service on collector, the protest not reaching the office of the collector within the statutory time. G. A. 6861 (T. D. 29514) followed.—T. D. 31449 (G. A. 7196).

Protest After Reliquidation.—The liquidation and settlement of duties upon merchandise becomes final and conclusive upon all parties at the expiration of one year from the date of entry. A reliquidation of an entry for the purpose of adjusting the duties on one case of merchandise which remained in warehouse after the passage of the tariff act of 1909 does not open the entry for protest against the collection of duties on goods entered under the previous act more than a year prior to such reliquidation.—T. D. 31334 (G. A. 7177).

Place of Filing Protests—Warehouse and Transportation Entries.—Where goods were imported and entered at Eastport, Me., for warehouse and immediate transportation to Boston, and such entries were liquidated by the collector at Eastport, the protest should be lodged with the collector at that port and not at Boston. When filed at the wrong port the protest will be dismissed for want of jurisdiction.—T. D. 30355 (G. A. 6982).

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Sufficiency of Protest.

COLLATERAL ATTACK.—The Board of General Appraisers is a judicial tribunal, clothed with judicial powers to determine the classification of imported goods and the rate of duty thereon, and its decisions on questions of classification or rates are open only to direct and not collateral attack by parties to the proceedings.

MATERIALS FOR STRAW HATS OTHER THAN PLATEAUX.—The board's authority was complete, and this had been properly invoked. The board was charged with the duty, and it had the power, to decide not alone the main issue concerning plateaux, but every other question of law or fact material in determining the case. The collector was without warrant of law in disregarding the board's decision.—U. S. v. Kurtz, Stubbeek & Co. (Ct. Cust. Appls.), T. D. 34192; (G. A. 7478) T. D. 33618 affirmed.

A protest objecting to the assessment of duty on goods contained in certain cases specified in the protest as "529-38, 10 cases and various," is not limited to the goods contained in the particular cases enumerated, but applies to all other cases on the invoice involving similar merchandise. Bing & Co.'s Successors v. U. S. (3 Ct. Cust. Appls., 211; T. D. 32532) cited and followed.—T. D. 33618 (G. A. 7478); affirmed by T. D. 34192 (C. C. A.), *supra*.

SUFFICIENCY OF PROTEST.—Where importers in their protest claim reductions of duty on merchandise described in the terms of the tariff act under the appropriate paragraph and at the rate provided therein, absolute accuracy is not essential, provided the collector can determine with reasonable certainty what the importers had in mind when filing their notice of dissatisfaction.

Importers are not limited to the precise packages mentioned in the protest if it shall reasonably appear that other packages included in the invoices were erroneously omitted. Nor are the claimants limited to the estimated amount of refunds alleged to be due them, the collector being the proper person to determine the exact amount to be refunded on the reliquidation of the entries in conformity with the mandate of the Board of General Appraisers or the court.

FINALITY OF DECISIONS BY THE BOARD OF GENERAL APPRAISERS.—When a board of general appraisers has decided cases pending before it and has issued a mandate directing a reliquidation of the entry, collectors of customs, if of the opinion that certain of the merchandise is not covered by the protest and that therefore the board is without jurisdiction to pass upon the issue, should comply with the statutory requirement and apply for a rehearing

within 30 days or file an appeal in the court from the board's decision.—*T. D. 32328 (G. A. 7337)*.

Vague and Multifarious Protests.—An attested declaration by a foreign dealer in the goods that the merchandise was manufactured from an article produced in the United States will not be admitted to control a case presented by the evidence.

Where no proper conclusion can be drawn from the evidence as to what in fact was the component of chief value in an article, no attempt to classify the article according to its component of value in chief will be made, and the finding of the Board of General Appraisers will be affirmed.—*Strakosh v. U. S. (Ct. Cust. Appls.)*, *T. D. 31453*; (*G. A. Ab. 21483*) *T. D. 29877* affirmed.

We find in the protests a great number of claims, apparently made at random and without any regard to whether the language of the paragraphs named had any possible application to merchandise of the character upon which we are called to pass. Even if such a practice is permissible under the statute, it is, we think, open to the severest kind of criticism. The only purpose of a protest, aside from preserving the right of protestant to a review by the Board of General Appraisers, is to direct the attention of the collector to an alleged erroneous assessment of duty, pointing out so clearly what the rate of duty should have been and the paragraph under which it should have been assessed, that the collector may, if he will, correct his alleged error; but in these cases we can not see, so far as the collector is concerned, that the protest could have served any such purpose.—*Ab. 21483*; affirmed by *T. D. 31453 (C. C. A.)*, *supra*.

Where the importer claimed his importation was dutiable as petroleum under tariff act, 1897, at the rate of duty imposed by Germany on petroleum, and it appeared the rate was levied on the importation as paraffin and as vaseline oil, each of which was then dutiable at other and differing rates in Germany, a protest as to petroleum alone is not sufficiently exact; it does not show that that which was in the mind of the protesting importer was brought to the knowledge of the collector. Citing *Carter v. U. S. (T. D. 31033)*.—*Bliven v. U. S. (Ct. Cust. Appls.)*, *T. D. 31239*; *T. D. 27550* affirmed.

A protest, blanket in form, covering various classes of articles, not included in the importation or importations in question, fails to state the importer's claim with such clearness and certainty as to acquaint the collector with the real grounds of the complaint and is insufficient. Protests are to be construed liberally and alternative claims are allowable, but the requirement of law that the importer shall set forth in the protest distinctly and specifically and in respect to each entry or payment the reason for his objection thereto may not be ignored.—*Lichtenstein & Co. v. U. S. (Ct. Cust. Appls.)*, *T. D. 31105*; *T. D. 30169 (C. C.)* and (*G. A. 6534*) *T. D. 27885* affirmed.

Where the importer protests against the rate assessed on his importation and points out the provisions of law under which he contends the articles in question are properly dutiable, and indicates these with sufficient clearness for the collector by mere computation or examination of the goods to determine their classification, he has in all essential respects complied with section 14 of the customs administrative act of 1890 relative to protests against a collector's decision.

The substitution of the word "reasons" for "grounds" in the customs administrative act of June 10, 1890, held not to exact a more specific protest than formerly on the part of the importer (declining to follow *Hygienic Wood Wool*, *T. D. 23728*); *Baker v. U. S. (T. D. 25892*; 140 *Fed. Rep.*, 115) distinguished.—*Carter v. U. S. (Ct. Cust. Appls.)*, *T. D. 31033*; *Ab. 20069 (T. D. 29389)* reversed.

Collector's Authority in Reliquidating by Adding Charges Not on Invoice.—The legislative and judicial history of the customs administrative act is reviewed. The customs administrative law markedly differentiates between actual market value and dutiable actual market value, and makes it the duty of the appraising officer to determine the first, the duty of the collector to determine the last. The goods here—feathers—were packed in inside boxes and there had been additional packing charges, though all mention of these was omitted from the consular invoice. The collector, on being later apprised of the fact of omission, reliquidated the entry by adding thereto the packing charges. There was in this no interference with or change of the invoice entered or appraised valuation; the collector simply exercised his right of adding to the appraised value to make dutiable value these packing charges. *Reard v. Porter* (124 U. S., 437). *U. S. v. Francklyn* (4 Ct. Cust. Appls., 54; T. D. 33306) distinguished.—*U. S. v. Spingarn Bros.* (Ct. Cust. Appls.), T. D. 34002; (G. A. Ab. 30556) T. D. 32943 reversed.

Timeliness of Protest.—When the 10-day limit fixed by the customs administrative act for filing a protest expires on Sunday, it is not a seasonable compliance with the requirement when the protest is filed on the Monday ensuing. *Shefer v. Magone* (47 Fed., 872). *Monroe Cattle Co. v. Becker* (147 U. S., 47) distinguished.

Nor is it a compliance with the requirement if the protest should be mailed at 4.30 p. m. on Saturday preceding the Sunday of expiration. The office of the collector was closed to public business at that hour, and the protest, having reached the collector's office at a later hour, came too late.—*Psaki Bros. v. U. S.* (Ct. Cust. Appls.), T. D. 33122; (G. A. Ab. 28892) T. D. 32645 affirmed.

Insufficiency of Protest.—A nice precision is not required in formulating a protest, but the ground of it should be fairly stated. The proper rate of the countervailing duty on the paraffin of the importation is the rate assessed by Germany on paraffin, since the paraffin of the importation was manufactured in Germany and exported thence. But the importers asserted no claim on that ground, protesting instead for the Russian rate, because the crude petroleum used was a Russian product. Such a protest is clearly insufficient.—*Sonneborn's Sons v. U. S.* (Ct. Cust. Appls.), T. D. 32348; (Ab. 12457) T. D. 27550 affirmed.

Sample Not Part of Importation.—There was only one witness for the importer, and it is not made to appear that the sample of merchandise he had examined and testified concerning was in fact a sample of the importation, and so properly representative of the goods in question. The board on that showing declined to disturb the collector's finding of a classification; and that finding for the same reason will not be disturbed here.—*Shallus v. U. S.* (Ct. Cust. Appls.), T. D. 32347; (Ab. 17667) T. D. 28626 affirmed.

Assignment of Error.—The circuit court on appeal from the Board of General Appraisers will not consider whether a protest decided by the board was insufficient, unless the question of insufficiency is raised by the assignment of errors.

On appeal from the Board of General Appraisers error was assigned on the point that the board had erred in holding the merchandise in question to be free of duty. *Held*, that the assignment related to the merits and was not sufficiently comprehensive to include the point of the sufficiency of the protest passed on by the board.—*U. S. v. Hempstead* (C. C.), T. D. 30844; Ab. 13865 (T. D. 27801) affirmed.

Appeal—Additional Evidence.—Where importers abandoned their protests before the Board of General Appraisers without taking testimony, it was

within the sound discretion of the board to refuse to reopen the cases or restore them for hearing, and on appeal to the circuit court the importers were not entitled to introduce further evidence under the provisions of section 15, customs administrative act of 1890.—*Strohmeyer v. U. S. (C. C.)*, T. D. 30807; Ab. 13788 affirmed (T. D. 27785).

REVIEW BY CIRCUIT COURT.—The right of "further evidence" in the circuit court, given by section 15, customs administrative act of 1890, on appeal from the Board of General Appraisers, does not permit importers to ignore the board by withholding their evidence entirely and introducing it before the circuit court, thus presenting their controversies for the first time to the court. Such procedure would defeat the main purpose of said customs administrative act.—*Plummer v. U. S. (C. C. A.)*, T. D. 29443; T. D. 28635 (C. C.) affirmed.

Amendment of Protest.—The provision of section 14 of the customs administrative act of 1890, as amended by the act of May 27, 1908, relative to filing protests within 15 days after the liquidation of the entry is mandatory and not directory. In *re Guggenheim* (112 Fed. Rep., 517); *Saltonstall v. Russell* (152 U. S., 628); *Stone's case*, G. A. 5478 (T. D. 24786). This mandatory provision requires that a protest shall be filed within 15 days, and this board has no power to permit the filing of a protest after that time. To permit the protestant to amend his protest in this case would be equivalent to filing a new protest, and this the board can not do. In *re Collector of Customs* (55 Fed. Rep., 276).—Ab. 23003 (T. D. 30529).

Protests Against Charges—Timeliness.—A protest against storage charges exacted by the collector is too late, though filed within 10 days after the liquidation of the entry but more than 10 days after the payment of the charges.—T. D. 29371 (G. A. 6831).

Protest With Typewritten Signature.—A protest the signature to which is made on the typewriter is within the requirement of section 14, customs administrative act of 1890, that importers shall "give notice in writing" of their grounds of protest. *Bodart v. Schell* (33 Fed. Rep., 825); *Henschel v. Foster* (9 Pick., Mass., 312) followed.—T. D. 29359 (G. A. 6829).

Protest—Sufficiency.—A protest is sufficient under section 14, customs administrative act of 1890, which, though imperfectly expressed, may be understood when read in connection with the statute referred to therein.

In determining the sufficiency of a protest against the assessment of duty by a collector of customs, the fact that the collector understood the protest would seem to be relevant.

The authority of a collector of customs to sustain a protest or do otherwise than forward it immediately to the Board of General Appraisers, considered; but, undoubtedly, the practice has always permitted reliquidation by the collector after the protest is received.—*Lothrop v. U. S. (C. C.)*, T. D. 29206; Ab. 13931 (T. D. 27801) reversed.

Where a protest is lodged against the assessment of duty on "lithographic prints or other merchandise," claiming that they are dutiable under paragraph 400, tariff act of 1897, at the rate or rates therein provided according to thickness, cutting size, etc., *Held*, that the protest is a sufficient compliance with the requirements of section 14, customs administrative act of 1890, where the record before the collector includes a report showing the particular rate applicable. *Hensel v. U. S. (T. D. 28637)* followed; G. A. 6549 (T. D. 27943) overruled.—T. D. 29071 (G. A. 6775).

AMBIGUOUS STATEMENT OF OBJECTIONS.—Silk goods dutiable at 50 cents per pound under the first clause of a tariff paragraph relating to "woven fabrics

in the gum" were asserted in an importer's protest to be dutiable "at 60 cents per pound under the first clause, being woven fabrics in the piece, dyed." *Held*, that, though this rate and description ("dyed") were incident to the second clause and not to the first, the protest referred sufficiently to the first clause to satisfy the requirements of protests, as prescribed in section 14, customs administrative act of 1890.

REFERENCE TO WRONG PARAGRAPH.—Goods dutiable under paragraph 387, tariff act of 1897, were asserted in the importer's protest to be dutiable under paragraph 388. *Held*, that as the language of the protest indicated an intention by the importer to cite paragraph 387, the protest should be construed as referring to that paragraph.

COMPONENT MATERIALS.—In ascertaining the component material of chief value in imported goods, the test should be made as of the time of importation. Proof that one material predominated in value on one date is not conclusive as to the composition of precisely similar goods imported on another date.

EVIDENCE.—Where at a hearing before the circuit court counsel for one of the parties concedes a point of fact, the question can not be raised on appeal to a higher court.—*U. S. v. Leerburger* (C. C. A.), T. D. 28851; T. D. 28262 (C. C.) affirmed.

Certain lithographic prints, erroneously classified as printed matter, were claimed in the importer's protest to be dutiable under a paragraph relating to other articles besides lithographic prints, "at the rate or rates therein provided according to thickness, cutting size, etc." Lithographic prints are the only articles made dutiable under said paragraph according to "thickness" and "cutting size." *Held*, that, as it was practicable for the collector under the law to procure samples of the merchandise and ascertain the facts determining the applicable rate, the protest, regardless of its failure to specify such rate, was sufficiently distinct and specific to meet the requirements of section 14, customs administrative act of 1890.—*Hensel v. U. S.* (C. C.), T. D. 28637; (G. A. 6549) T. D. 27943 reversed.

Jurisdiction.—A Board of General Appraisers, sitting as a board of classification under section 14 of the customs administrative act of 1890, is a statutory tribunal and has power to determine only questions of law and fact arising upon protest. It has no equity jurisdiction and no power to relieve an importer from his failure to take timely steps, which the statute provides, to secure reappraisement by a Board of General Appraisers.—T. D. 29047 (G. A. 6769).

Reliquidation Under Decision of General Appraisers.—The Board of General Appraisers passed on a protest making the contentions that cherries were dutiable at 20 per cent ad valorem and bottles were free of duty. The importers were entitled to a favorable decision on each contention. The board in its decision referred only to the cherries, but ruled that "the protests are all sustained, with instructions to the collector to reliquidate the entries at the rate of 20 per cent ad valorem." The importers did not attempt to have this error corrected by appeal, but protested against the refusal of the collector to consider the board's decision as sustaining both contentions. *Held*, that it was not incumbent on them to appeal; that the collector erred in refusing to reliquidate on the bottles, and that they were entitled to protest against the reliquidation on the basis adopted.—*La Manna v. U. S.* (C. C.), T. D. 28890; Ab. 14185 (T. D. 27873) reversed.

Certificates of Chambers of Commerce.—Where an importer, by protest, challenges the correctness of the rate or amount of duty levied by the collector upon a product of petroleum, which rate or amount is controlled, under the proviso to paragraph 626, tariff act of 1897, by the duty imposed by the country

of production upon a like commodity exported thereto from the United States, the burden of proving in what country said commodity was produced is upon the importer.

A statement not sworn to is not competent evidence to establish the facts therein set out in a classification case before the Board of General Appraisers.

The German agreement (and the regulations made by the Secretary of the Treasury based thereon) containing a stipulation to the effect that certificates of value issued by German chambers of commerce should be accepted by appraisers as competent evidence, applies only to questions of value that come up in reappraisal proceedings, and does not apply to the many questions of fact arising with reference to the proper classification and dutiable character of imported commodities.—T. D. 28800 (G. A. 6727).

Time for Filing Protest.—Section 14, customs administrative act of 1890, prescribing that protests against decisions of collectors of customs shall be filed "within 10 days after but not before" liquidation, fixes definitely the period within which protests must be made; and a protest not filed therein is not valid.

The time within which to file a protest was not extended by the error of a liquidating clerk in noting on the entry the date of liquidation as being later than it actually was, even though the importer may have been misled by the error, where such date was correctly given in the liquidation sheet posted for public inspection and in the notice of liquidation sent to the importer.

In case of discrepancy as to the date of liquidation, appearing between the entry and the liquidation sheet posted for the inspection of importers in accordance with articles 1416 and 1460, Customs Regulations, 1899, the importer is bound to take notice of the latter rather than the former.—Wyman v. U. S. (C. C. A.), T. D. 28439.

Protest Unsigned a Nullity.—A so-called protest lodged with the collector of customs against the assessment of duty on imported merchandise, but which is not signed either by the owner, importer, consignee, or agent of the merchandise, or by anyone else, is not the "notice in writing" required by section 14 of the customs administrative act of 1890, and must be considered a nullity and of no effect.—T. D. 28322 (G. A. 6644).

Jurisdiction of the Board.—The Board of General Appraisers has no jurisdiction to pass upon a protest demanding relief from the payment of duty, owing to the fact that the merchandise is alleged to be unfit and spoiled and has been returned to the place whence exported.—T. D. 28290 (G. A. 6632).

Sufficiency of Protest.—A protest read, "you have assessed a duty of 1 cent per pound, presumably under paragraph 141, and in addition to other rate or rates on certain iron or steel. Said merchandise is not covered by, nor dutiable under, the said paragraph, nor any portion thereof." *Held*, that this was a sufficiently definite statement of objections to the assessment of an additional duty of 1 cent per pound under said paragraph 141.—McCoy Co. v. U. S. (C. C.), T. D. 28283.

In the determination of the sufficiency or insufficiency of a protest, the same must be considered in connection with the record, and if it can be ascertained from the invoice and protest, when read together, the particulars of the merchandise, paragraph, rate of duty, etc., counted upon by the importer, such a protest is sufficient.—T. D. 28256 (G. A. 6627).

Importers contended in their protest that the collector should have assessed duty on the basis of the appraised value of the goods, and that the exaction of duty on the basis of a gross sum added to the invoice value on entry to make market value was illegal. *Held*, that under section 14, customs administrative

act of 1890, the protest was sufficiently distinct and specific as to raise the question of whether a deduction for nondutiable charges should be made from said gross sum.

A judgment may be reformed, regardless of the expiration of the term at which it was rendered, when necessary to correct computations made under it.—*Woodruff v. U. S. (C. C.)*, T. D. 28207.

Reliquidation.—The Board of General Appraisers sustained an importer's protests, holding the merchandise dutiable at the maximum rate provided on goods of that class, excepting those as to which it was ascertainable "from the invoices, samples, or records" that a lower rate was applicable. *Held*, that in reliquidating in accordance with this decision the collector was not required to consider any data not supplied by the record made before the board. T. D. 28077 followed.—T. D. 28219 (G. A. 6608).

Liability of Consignee.—Under section 14, customs administrative act of 1890, when the importers fail to file with the collector of customs the notice of dissatisfaction (protest) required by said section, a reliquidation of duties becomes final and conclusive against them, and the question of the correctness of the reliquidation can not be considered in proceedings to collect the amount becoming due under the reliquidation.—*U. S. v. Mexican International Railroad Co. (C. C. A.)*, T. D. 28182.

Sufficiency of Protest.

ALTERNATIVE CLAIMS.—A protest making reasonable alternative claims, one of which specifies the applicable rate of duty and the paragraph of the law under which the goods should have been classified, held to be a sufficient compliance with the requirements of section 14, act of June 10, 1890.—*Koechl v. U. S. (91 Fed. Rep., 110)*.

REASONS FOR THE OBJECTION.—Protests stating that the reasons for the objection to the assessment made by the collector are that the goods are "more aptly and specifically provided for" under other provisions of the tariff which are specified, is in form and substance a compliance with the requirement of the statute that the protest shall set forth therein distinctly and specifically the reason for the importer's objection to the collector's decision. *Greely's Administrator v. Burgess (18 How., 413)*; *Davies v. Arthur (96 U. S., 148)*; *Arthur v. Morgan (112 U. S., 495)*; *Schell's Executors v. Fauché (138 U. S., 562)* and *Presson v. Russell (152 U. S., 577)* cited.—T. D. 28171 (G. A. 6590).

Figured cotton articles of similar description to those which were held in G. A. 5790 (T. D. 25580) to be dutiable as countable cotton cloth at certain rates as provided for in paragraphs 304 to 309, tariff act of 1897, with 2 cents per square yard additional under paragraph 313, were claimed to be "dutiable as cotton cloth (by virtue of paragraph 310, Schedule I, tariff act of 1897) at the appropriate rate according to the number of threads per square inch, the value per square yard, and the number of square yards to the pound under paragraphs 304 to 309, inclusive, Schedule I, tariff act of 1897." *Held*, that the protests are insufficient in that they do not set forth "distinctly and specifically" the reasons for the importers' objections to the assessment of duty made by the collector, as required by section 14, act of June 10, 1890. They do not name the rate of duty or the particular paragraph of the law under which the goods should have been classified, and they are not sufficient to notify the collector of the nature and character of the objection sought to be raised by the protests. *Presson v. Russell (152 U. S., 577)*, *Boker v. U. S. (145 Fed. Rep., 1022; T. D. 27192)*, affirming 140 Fed. Rep., 115 (T. D. 26451), *Rosenberg v. U. S. (146 Fed. Rep., 84; T. D. 27183)*, *U. S. v. Bayersdorfer (126 Fed. Rep., 732; T. D. 24923)*, G. A. 4566 (T. D. 21640), G. A. 6360 (T. D. 27328), and the

many authorities therein quoted, G. A. 6447 (T. D. 27631) and G. A. 6472 (T. D. 27684), cited and followed.—T. D. 28159 (G. A. 6588).

Action for Duties.—An entry of pearls which was originally liquidated at 10 per cent was reliquidated within a year at 60 per cent. The importers duly filed a protest against the reliquidation, but declined to pay the additional amount demanded, and in an action brought by the United States for the unpaid duties it was held that the defense that the duties were illegally assessed was not open to the importers. The only remedy of the importer in such a case is to pay the amount demanded and have the action of the collector reviewed by the Board of General Appraisers under the provisions of this section. *U. S. v. Tiffany* (151 Fed. Rep., 473; T. D. 27754), reversing 137 id., 971; T. D. 26313. Application to serve and file a supplemental answer denied as unnecessary, the circuit court having ample power to grant such relief and to suspend the trial until the importer, by payment of the duties assessed, may put itself in position to try the question as to classification before the Board of General Appraisers. *Tiffany v. U. S.* (153 Fed. Rep., 969; T. D. 28057). Motion to stay the trial of the action in the circuit court so that the importer may have an opportunity to pay the duties to the collector and have the legality of the assessment reviewed by the Board of General Appraisers granted, and an order issued by the circuit court providing that if the importer fails to tender the amount liquidated, with interest, to the collector, and to request that the papers be transmitted to the board, within 10 days after the issuance of the order, the stay may, on application by the plaintiff (collector), be vacated.—*U. S. v. Tiffany* (C. C.), T. D. 28107.

Reliquidation Under Conditional Decision—Duty of Collector.—The Board of General Appraisers sustained an importer's protests, holding the merchandise dutiable at the maximum rate provided on goods of that class excepting those as to which it was ascertainable "from the invoices, samples, or records" that a lower rate was applicable. *Held*, that in reliquidating in accordance with this decision the collector was not required to consider any data not supplied by the record made before the board.—*U. S. v. Hunter* (C. C. A.), T. D. 28077; T. D. 27510 (C. C.) reversed and (G. A. 5985) T. D. 26210 affirmed.

Protest—Sufficiency.—Under section 14, customs administrative act of 1890, requiring that protests shall set forth "distinctly and specifically" the objections of the importers, a protest is insufficient which contends that merchandise is free of duty under one paragraph of the tariff as burlaps, when it should have been classified as free under another paragraph as jute bagging.—*Corbitt & Macleay Co. v. U. S.* (C. C.), T. D. 28059.

Action for Duties.—Where an importer has been sued in the circuit court for unpaid duties, the court has ample power to suspend the trial until the importer, by the payment of the duties assessed, may put himself in position to try the question of classification before the Board of General Appraisers.—*Tiffany v. U. S.* (C. C. A.), T. D. 28057.

Sufficiency of Protest.—A protest read in part, "protest is hereby made against your decision assessing duty at 35 per cent ad valorem, or other rate or rates, on lithographic prints, krippen, mechanical cards, etc., covered by entries below named. This protest is intended to apply separately and collectively to every part of goods assessed under paragraph 418, as well as to all other goods assessed at 35 per cent ad valorem." The entry referred to did not cover any merchandise assessed at the rate of 35 per cent ad valorem,

or under said paragraph 418, but did cover lithographic prints and booklets assessed under paragraph 400. *Held*, that the protest might be construed as relating to those articles, and not as limited to goods assessed at 35 per cent.—*Fuld v. U. S. (C. C. A.)*, T. D. 27878; reversing 143 id., 920; T. D. 27134.

A protest claiming that fishhooks made from round iron or steel wire upon which duty had been assessed at the rate of 40 per cent ad valorem and 1½ cents per pound under the provision of paragraph 137, tariff act of 1897, should be dutiable at the rates provided for wire, according to gauge, valued at under 4 cents per pound, under paragraph 137 of the above act." *Held* to be insufficient (1) because, under the rule in the case of *Boker v. U. S.* (140 Fed. Rep., 115; T. D. 26451), affirmed without opinion (T. D. 27192), it fails to state the ground of objection or the rate of duty which is claimed; (2) because articles made from wire are denominatively provided for in paragraph 137 at rates different from that prescribed in said paragraph for wire. *G. A. 5879* (T. D. 25892), affirmed in the *Boker* case (*supra*), cited and followed. Affirmed by consent (T. D. 28210).—T. D. 27763 (*G. A. 6493*).

Action for Duties.—The customs administrative act of 1890 created the Board of General Appraisers as a special tribunal having exclusive jurisdiction over controversies as to classification of imported merchandise; and, under section 14 thereof, making decisions of collectors "final and conclusive" unless reviewed by the board, the correctness of a collector's decision can not properly be challenged by the importer in an action in the circuit court for unpaid duties. His remedy is to secure a review of the collector's action by the Board of General Appraisers by paying the duties under protest as prescribed in said section.

In order to secure a review of the decision of a collector of customs by the Board of General Appraisers under section 14, customs administrative act of 1890, an importer must, in addition to filing a protest, pay the amount of duties ascertained by the collector to be due, if the merchandise is entered for consumption.—*U. S. v. Tiffany (C. C. A.)*, T. D. 27754.

Protest Must Be Specific.—A protest assailing a reappraisement simply on the ground that no lawful reappraisement was made by the board is too vague and uncertain to comply with the requirements of section 14 of the customs administrative act of 1890. Such protest is defective in failing to state in what particular the alleged irregularity and illegality consisted.—T. D. 27717 (*G. A. 6480*).

Rejection of Teas.—Protests against the action of the collector in rejecting certain teas do not come within jurisdiction of the Board of United States General Appraisers, but come within the rules and regulations as laid down in section 6 of the tea-inspection act of March 2, 1897 (T. D. 17995).—T. D. 27702 (*G. A. 6474*).

Unclaimed Goods.—Where the importer or consignee declines to make entry of imported goods and the goods are accordingly placed in "general order," where they remain for more than one year and are afterwards sold as unclaimed merchandise and purchased by the importer or through an agent for a trivial sum, the board will decline jurisdiction of the case under the rule settled in *In re Chichester* (48 Fed. Rep., 281), and will dismiss the protest without passing on the merits of the case.—T. D. 27680 (*G. A. 6468*).

Sufficiency of Protest.—A protest from which it plainly appears that the claim is lodged under a paragraph of the tariff act providing eo nomine for merchandise, and which is the sole paragraph in the tariff act providing for such merchandise, is sufficient.—T. D. 27704 (*G. A. 6476*).

A protest which counts upon a description of merchandise contained in but one provision of the tariff law is in effect an *eo nomine* designation and, as such, sufficient. *Salambier v. U. S.* (170 U. S., 621) followed.—T. D. 27662 (G. A. 6460).

A protest which does not point out distinctly and specifically the provision of law relied upon by the protestant nor the rate of duty applicable to the particular merchandise, and which assigns no reasons why the particular alleged rate is applicable, or any such reasons, but which alleges a rate of duty inapplicable to the merchandise in question, is insufficient.—T. D. 27631 (G. A. 6447).

Reliquidation of Entries.

WHEN NEW PROTEST DOES NOT LIE.—The reliquidation of an entry by a collector, made to execute the mandate of the Board of General Appraisers, which conforms to such mandate, will confer on the importer no new right of protest.

WHEN CONTRA.—Neither the board nor the courts, however, in passing on the classification of imported merchandise, can make their mandate for reliquidation extend beyond the issues specifically raised by the protest under consideration, and any action by a collector of customs in violation of this principle would properly be subject to a new protest and appeal to the board for correction.—T. D. 27538 (G. A. 6408).

Goods in Bond—Weight on Withdrawal.

PREMATURE PROTEST.—As it can not be known that any change has occurred in the weight of goods in bond between the time of their entry and withdrawal, or the extent of such change, if any, ascertained until the goods are finally weighed and actually withdrawn from bond, protests anticipating the contingency of a reduction in the weight of the goods on withdrawal from bond and filed within 10 days of the original liquidation, *Held*, to be prematurely filed and not entitled to consideration.

PROPER TIME FOR FILING PROTEST.—Protests of the above nature should be filed within 10 days after, "but not before the ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption," in accordance with section 14 of the customs administrative act of 1890.

CONSTRUCTIVE LIQUIDATION.—If, upon withdrawal, it should appear that there was a change in the weight of the merchandise, and the collector should refuse to reconsider his previous action or to acquiesce in the claim of the importer, such refusal would constitute a definite and final ascertainment and liquidation of duties against which a protest might be filed thereafter, but not before. *American Cigar Co. v. U. S.* (146 Fed. Rep., 484; T. D. 27036), affirming 145 id., 574; T. D. 25976 and T. D. 25353 (G. A. 5695) followed.—T. D. 27486 (G. A. 6396).

Protest Restricted by Specific Language.—Where in a protest an importer specifically designates a provision in a paragraph of the tariff law which contains more than one distinct provision as the law under which he claims the right to enter his merchandise, he is restricted to this provision and relief can not be granted under another distinct and separate clause of the same paragraph.—T. D. 27421 (G. A. 6381).

Insufficiency of Protest.—Nickel wire, with an iron or steel core, was assessed for duty at 45 per cent *ad valorem* under the provisions of paragraph 137, tariff act of 1897, as a wire not specially provided for. The only claim in the protests is that the goods are "properly dutiable under the provision of paragraph 137, tariff act of 1897." *Held*, that the protests are insufficient, in that they do not set forth distinctly and specifically the reasons for the im-

porters' objections to the assessment of duty, as required by section 14, act of June 10, 1890. *Boker v. U. S.* (T. D. 27192), affirming *Boker v. U. S.* (140 Fed. Rep., 115; T. D. 26451), and *G. A. 5879* (T. D. 25892) cited and followed.—T. D. 27329 (*G. A. 6361*).

Sufficiency of Protests.—The well-established rule by which the sufficiency of a protest is measured, adopted, and followed by the courts for over a century is as follows: It must be so distinct and specific as to show that the objection taken at the trial was, at the time the protest was made, in the mind of the importer, and that it was sufficient to notify the collector of its true nature and character.

The following requirements have been established in pursuance to the above rule: (1) The protest must point out the paragraph and the portion of the paragraph applicable to the goods where there are different rates applicable to differentiated goods provided for in the same paragraph. (2) The protest must correctly describe the goods. (3) The protest must correctly set forth the rate of duty applicable. (4) Where the goods are described *eo nomine* in the tariff act, it will be sufficient to so describe them in the protest. (5) Where a genus and species are both named in the tariff act, it will not suffice in the protest to rely upon that relationship and allege the merchandise to be other than of the name to be counted upon for judgment. (6) The reasons for the objections to the decision of the collector must be distinctly and specifically set forth in the protest.—T. D. 27328 (*G. A. 6360*).

Effects of Professional Lecturer in Bond.—An entry made by a professional lecturer of works of art imported for temporary use, in bond, without payment of duty, under paragraph 701, tariff act of 1897, may be liquidated by the collector at any time after entry and before the expiration of the time named in the bond.

A protest objecting to the classification made by the collector under such liquidation, which is filed within 10 days thereafter and before the expiration of the bond, is valid, and the questions raised may be considered and decided by the Board of General Appraisers, before the expiration of such period, irrespective of whether any duties have been or may be collected.—T. D. 27302 (*G. A. 6346*).

Action for Duties After Reliquidation at Increased Rate.—A reliquidation of duty on imported merchandise has all the validity of the original liquidation, and when made becomes the liquidation in lieu of the original one and must be treated as such under section 14, customs administrative act of 1890.

Under section 14, customs administrative act of 1890, providing that decisions of collectors of customs shall be "final and conclusive" in the absence of protest, and providing for a review thereof by the Board of General Appraisers, *Held*, that the legality of a reliquidation of duty may not be contested otherwise than in the manner prescribed in said section.

Within one year after entry the duty on an importation of merchandise was reliquidated by the collector at a higher rate than was assessed at the first liquidation, and an action was brought against the importer to recover the balance which thereby became due. The importer made no protest under section 14, customs administrative act of 1890, but defended the action on the ground that the importation had been correctly assessed on the first liquidation. *Held*, that this defense was not available to the importer, and that the assessment of duty was final except when reviewed by the Board of General Appraisers under the provisions of said section.—*Louisville Pillow Company (C. C. A.)*, T. D. 27260.

Similitude—Sufficiency of Protest.—Braids composed of horsehair are dutiable by similitude to silk braids under paragraph 390, or to cotton braids under paragraph 339, tariff act of 1897. *Donat v. U. S.* (134 Fed. Rep., 1023; T. D. 25113), G. A. 5496 (T. D. 24817), and G. A. 5590 (T. D. 25022) followed.

Where an importer intends to make the contention that his merchandise is dutiable by virtue of the similitude clause, it is necessary that he should state the fact in his protest. A protest claiming an article to be dutiable under the proper paragraph of the tariff act, but which fails to refer to the similitude clause, is insufficient to raise the question whether the article should have been classified under the paragraph cited by virtue of the similitude clause. Following *U. S. v. Dearberg* (T. D. 27008), which reversed 135 Fed. Rep., 245 (T. D. 25782), and *Ab. 775* (T. D. 25134).—T. D. 27252 (G. A. 6327).

Sufficiency of Protest.—The provision in section 14, customs administrative act of 1890, that importers shall set forth "distinctly and specifically" in their protests the reasons for their objections, is not satisfied by the contention in a protest that the "merchandise is dutiable at the appropriate rate and under the proper paragraph according to the component material of chief value."—*Rosenberg v. U. S.* (C. C.), T. D. 27183.

Res Adjudicata.—A case brought before the Board of General Appraisers by an importer, as prescribed in section 14, customs administrative act of 1890, related to merchandise which had been the subject of an action in the circuit court by the importer, under the law superseded by said act; this action had resulted in a verdict that was favorable to the importer in some respects and adverse otherwise; the goods as to which the verdict was adverse were the subject of the proceedings before the board. *Held*, that the entire controversy having been submitted to the circuit court in the former action, it had become res adjudicata and the importer was precluded from any further recovery.—*U. S. v. Johnson* (C. C.), T. D. 27120.

Protest—Sufficiency.—A protest claiming a "refund of duty on skins," held a sufficient reference to paragraph 664, tariff act of 1897, exempting from duty "skins of all kinds," and to satisfy the requirement of section 14, customs administrative act of 1890, that the grounds of protest shall be stated "distinctly and specifically."—*U. S. v. Helmrath* (C. C. A.), T. D. 27717; T. D. 25900 (C. C.) affirmed.

Repairs on Vessels, R. S. 3114.—Under section 14, customs administrative act of 1890, giving the Board of General Appraisers authority to review decisions of collectors of customs "as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage)," the board has jurisdiction to review the action of a collector in assessing duties on the cost of repairs of vessels under section 3114, Revised Statutes.—*U. S. v. George Hall Coal Co.* (C. C. A.), T. D. 27068.

Fees of Department of Agriculture.—The words "all fees and exactions" contained in section 14, act of June 10, 1890 (known as the customs administrative act), relate only to such fees and exactions as may be imposed by the collector of customs.

This board has no jurisdiction to pass upon or decide the legality of a fee exacted by an inspector appointed by the Secretary of Agriculture to inspect imported birds. Affirmed by consent (T. D. 27773).—T. D. 26936 (G. A. 6242).

Reliquidation—Effect upon Pending Protests.—The collector's power to make a reliquidation, which will amount to a new decision respecting any merchandise covered by a protest, is suspended while the protest is pending, ex-

cept in so far as the collector may exercise that power to comply with the demands of the protest while it is still in his hands.

A voluntary reliquidation of an entry by a collector, changing the rate or amount of duty upon the merchandise, if made while a protest against the original liquidation is pending, is unauthorized and void in so far as its effect will be to invalidate the protest, and thus divest the importer of the right to have the decision complained of reviewed by the board and the courts.—T. D. 26898 (G. A. 6224).

Opening Defaults.—Where an importer has been duly notified of a day set for the hearing of his protest and fails to appear, he will be defaulted and the default will not be opened or the case further continued unless a proper excuse be rendered based on reasonable grounds.—T. D. 26864 (G. A. 6211).

Appeals from Reliquidations.—Where an original protest is filed specifying particularly certain goods by marks and numbers, and is sustained by the Board of General Appraisers, and the collector reliquidates the entry in accordance with such decision, the importer is debarred subsequently from enlarging another or second protest by including other merchandise outside of that specified in the original protest.

In carrying out the mandate of the board by the reliquidation of an entry in accordance with its decision, the collector acts in a ministerial and not in an administrative or judicial capacity, and no appeal will lie from such decision under the provisions of the customs administrative act of 1890.—T. D. 26848 (G. A. 6200).

Sufficiency of Protest—Wrong Claim.—Certain steel grinding plates, claimed in the protest to be dutiable properly as steel castings, were shown by the testimony of the importer to be steel plates, advanced from the class of castings by being machined subsequently to being cast. *Held*, that notwithstanding that the protest cited the correct rate and the correct paragraph number it was insufficient by reason of the misdescription contained therein. The attention of the collector was not directed by the protest to the provision of law under which the importer made his proof at the hearing. *U. S. v. Bayersdorfer* (126 Fed. Rep., 732; T. D. 24923), *Boker v. U. S.* (T. D. 26451), and *Hempstead v. U. S.* (94 Fed. Rep., 484), cited and followed; G. A. 5397 (T. D. 24604) and G. A. 5682 (T. D. 25296) cited.—T. D. 26835 (G. A. 6193).

Reference to Wrong Invoice.—An importer, in protesting against the erroneous assessment of duty on part of an importation of merchandise covered by several invoices, specified in his protest an invoice containing only merchandise that had been properly assessed, instead of one containing that which was improperly assessed. *Held*, that the protest could not be construed as relating to the goods on any other invoice than that specified therein.—*U. S. v. Hartley* (C. C.), T. D. 26640.

Tonnage Duties.—The jurisdiction of the Board of General Appraisers does not extend to appeals from the decision of the collector where that official has assessed tonnage duties on a vessel as provided by the Revised Statutes (ch. 3, sec. 4219 et seq.). Protests raising questions over which the board has no jurisdiction are properly dismissed.—T. D. 26444 (G. A. 6062).

Protest on Reliquidation.—If a collector of customs, in reliquidating an entry pursuant to a decision of the Board of General Appraisers, fails to conform to such decision, his action may be reviewed by the board, under section 14, customs administrative act of June 10, 1890, if a protest is filed within 10 days after liquidation.

Under section 14, customs administrative act of June 10, 1890, where the Board of General Appraisers, in reviewing a decision of a collector of customs

pursuant to a protest of the importer, sustains the protest, it becomes the duty of the collector to reliquidate the entry according to such decision. The former liquidation is abandoned so far as it is affected by the decision.—*U. S. v. Dickson* (C. C. A.), T. D. 26422; affirming T. D. 25339.

Time of Filing.

COLLECTOR MUST FORWARD ALL PAPERS IN PROTEST CASES TO THE BOARD.—Where a protest against the liquidation of an entry of imported merchandise has been lodged with the collector, under the provisions of section 14, customs administrative act of June 10, 1890, the duty is mandatory on the collector to transmit the invoice and all the papers and exhibits connected therewith to the Board of General Appraisers, without regard to any opinion which he may entertain as to the jurisdiction of the board. *In re Clement & Bray*, G. A. 5159 (T. D. 23791).

SUNDAY NOT TO BE EXCLUDED IN COMPUTING TIME ALLOWED FOR FILING PROTEST.—In computing the time within which such protest is required to be filed, if the last day of the 10 days specified falls on a Sunday, it can not be excluded, and a protest filed on the Monday following comes too late and should be overruled. *Pollman's case*, G. A. 3311 (T. D. 16723); *In re Mowat*, G. A. 4563 (T. D. 21628); *Shefer v. Magone* (47 Fed. Rep., 872).

LOCAL STATUTE OF NO EFFECT IN CONSTRUING FEDERAL STATUTES.—A local statute of the State of New York (N. Y. Gen. Laws, 1892, ch. 677, sec. 27), providing for the exclusion of Sundays in such cases, has no bearing on the construction of Federal statutes, which must be governed by the decisions of the Federal courts.—T. D. 26414 (G. A. 6055).

Severable Causes of Action.—Many of the various claims or demands which may arise from a single liquidation of an entry by a collector are severable causes of action and may be made the subject of separate protests, which may be considered and decided at different times.

A decision of the board sustaining a protest is not a bar to further proceedings under another pending protest against the same liquidation and covering the same and other merchandise, but raising a question which was neither expressly nor necessarily determined in the decision of the former case.

A reliquidation of an entry by a collector to execute an order of the Board of General Appraisers sustaining an importer's protest is not a "decision of the collector," within the meaning of section 14 of the customs administrative act. It will give no new right of protest nor invalidate another protest filed against the original liquidation.—T. D. 26385 (G. A. 6050).

Tentative Liquidations.—In accordance with instructions of the Secretary of the Treasury the final liquidation of an entry of imported merchandise was delayed, a tentative liquidation being made meanwhile, the entry being stamped "Subject to change of rates if required by law," and the importers receiving due notice of such action. On the final liquidation made subsequently the importers filed a protest against the rate assessed. *Held*, that the final liquidation was the one against which a protest could be made for any claim whatsoever, under section 14, customs administrative act of June 10, 1890.—*U. S. v. Franklin Sugar Refining Co.* (C. C.), T. D. 26316; (G. A. 5294) T. D. 24266 affirmed.

Cartage.—The expense for cartage of merchandise in removing the same to a warehouse when detained by the order of the Secretary of the Treasury for inspection and examination by the Department of Agriculture under the so-called pure-food law, being the act of March 3, 1903, can not be imposed upon the importer, but must be borne by the Government. *Acker, Merrill & Condit*

Co.'s case, G. A. 5689 (T. D. 25331) and *U. S. v. Acker, Merrall & Condit Co.* (133 Fed. Rep., 842; T. D. 25812).—T. D. 26244 (G. A. 6005).

Reliquidation—Right to Protest.—Where a reliquidation is made by order of the Secretary of the Treasury, remitting penal duties under United States Revised Statutes (sec. 5293), the original liquidation made by the collector as to the rate and amount of duty assessed on imported merchandise is not opened so as to confer a new right to protest on the importer under section 14, customs administrative act of June 10, 1890. G. A. 3815 (T. D. 17940) followed.

Such reliquidation, where the collector acts merely as the agent of the Secretary of the Treasury, involves no decision of the collector from which an appeal may be taken.—T. D. 26216 (G. A. 5991).

Sufficiency of Protest.

CLAIM OF RIGHT RATE BUT WRONG PARAGRAPH.—In a protest against an erroneous assessment of duty the proper rate of duty was claimed by the importers, but the objections to the assessment were based upon an inapplicable paragraph of the tariff act; both the paragraph thus cited and that which should have been provided the same rate of duty, and there was nothing in the terms of the protest to direct the attention of the collector to the correct paragraph or to suggest to him that the reference to the wrong paragraph was inadvertent and that the right one must have been intended. *Held*, that the protest failed to satisfy the requirements of section 14, customs administrative act of June 10, 1890, because not sufficiently distinct and specific.

CORRECTION OF ERRORS.—Under the customs administrative act of June 10, 1890, no new rule obtains with respect to the terms of protests against the assessment of duty, and in proceeding thereunder the Board of General Appraisers may not disregard omissions or mistakes in protests, which may have misled the collector, and allow them to be corrected when reviewing his decision. If the protest fails to satisfy the requirements of section 14 of said act, the action of the collector should be affirmed.—*U. S. v. Fleitmann* (C. C. A.), T. D. 26118.

Action for Duties.

LIABILITY FOR DUTIES.—Duties on imported merchandise are not simply a charge on the merchandise to be collected only by the custody of the property, but are a personal charge against the importer, which may be collected by a civil action, irrespective of the possession of the goods.

METHOD OF COLLECTION.—In collecting duties on imported merchandise the Government is not limited to procedure under sections 13 and 14, customs administrative act of June 10, 1890, and other provisions of tariff law, providing summary proceeding: in rem against imported merchandise, but may bring a civil action whenever by accident, mistake, or fraud no duties have been paid.

JURISDICTION OF DISTRICT COURTS.—Under section 563, Revised Statutes, district courts of the United States have jurisdiction over personal actions for unpaid duties on imported merchandise.—*U. S. v. National Fiber Board Co.* (D. C.), T. D. 26073.

Jurisdiction of Appraising Officers.—The jurisdiction of appraising officers in cases of reappraisal extends only to those items on the invoice as to which an appeal has been prosecuted. If they appraise other items not appealed on, their action is null and void and may be challenged by protest.—T. D. 25336 (G. A. 5694).

Imported Yachts.—The jurisdiction of the Board of United States General Appraisers, as conferred by section 14 of the customs administrative act of June 10, 1890, does not extend to vessels which have been assessed for duty by a collector of customs. The owner of the vessel should seek relief by libel in

admiralty. In *re Palm*, G. A. 5208 (T. D. 24002), citing cases.—T. D. 25238 (G. A. 5659).

Sufficiency of Protest.—Under the requirement of section 14, customs administrative act of June 10, 1890, that a protest against the decision of a collector of customs regarding the duty on imported merchandise shall state "distinctly and specifically" the importer's objections to such decisions, the Board of General Appraisers and the courts should pass only upon the correctness of the allegations in the protest rather than upon the merits of the case, and in event of an erroneous assessment may not impose the correct duty unless the importer has specifically pointed out in his protest, in substance or effect, the error made and the provision of law under which the assessment ought to have been made.—In *re Solvay Process Co.* (C. C.), T. D. 26039.

A protest must show upon its face the reasons for the importer's objection to the payment of duties. A reference to another and separate statement of such reasons, alleged to have been made elsewhere, is not a compliance with section 14 of the customs administrative act, and the Board of General Appraisers will not review the case.—T. D. 25297 (G. A. 5683).

A protest relating to goods within both paragraphs 307 and 313, tariff act of July 24, 1897, is sufficient if claim is made under the former, the latter paragraph being but a counterpart of or conjoint provision with the former as to goods covered by both.—T. D. 25108 (G. A. 5613).

Appeals From General Appraisers.

BOARD OF GENERAL APPRAISERS—JURISDICTION.—The Board of General Appraisers, under the authority given in section 14, customs administrative act of June 10, 1890, to "examine and decide the case" submitted to it by a collector of customs, is required first of all to determine its jurisdiction over the case.

GENERAL ASSIGNMENTS OF ERROR.—On an appeal from a decision of the Board of General Appraisers, 21 assignments of error were stated, 19 relating to the merits of the case, while the last 2 were general in terms, alleging only that the "board erred as a matter of law," etc. *Held*, that these 2 assignments should be construed with reference to the errors asserted in the preceding 19, and not as raising the unrelated question of the validity of the protest on which the proceedings before the board were based. *Held*, also, that assignments so general in form are not in compliance with the requirements for appeals under section 15, customs administrative act of June 10, 1890, prescribing that they shall consist of "a concise statement of the errors of law and fact complained of."

WAIVER OF DEFECTS IN PROTEST.—On appeal by the United States from a decision of the Board of General Appraisers, which reversed the assessment of duty by a collector of customs, no assignment of error was made by the appellant in regard to the sufficiency of the protest on which the proceedings before said board were based, but the collector had, in transmitting the protest to the board, alleged that it did not fulfill the requirements of section 15, customs administrative act of June 10, 1890. *Held*, that the failure to raise this issue by an assignment of error on appeal to the circuit court constituted a waiver by the United States of the alleged defect in the protest, and that the court could not in that case properly consider the question whether the board had jurisdiction to decide the protest on its merits.—*U. S. v. Brown* (C. C. A.), T. D. 25074.

SUFFICIENCY OF PROTEST.—An importer filed a protest against the assessment of duty by a collector of customs, claiming therein that the merchandise was either dutiable at a less rate or was free of duty under certain paragraphs of

the dutiable and free lists of the tariff act, which he specified in his protest. The Board of General Appraisers decided that the assessment was erroneous and that the merchandise should have been classified as free of duty under another paragraph than those cited in the protest, but that the protest should be overruled on the ground that, in not referring to the proper paragraph, it failed to satisfy the requirements of section 14, customs administrative act of June 10, 1890, which prescribes that an importer shall set forth in his protest "distinctly and specifically the reasons for his objections" to the assessment. *Held*, that this action was correct.

AMENDMENT OF PROTEST IN APPEAL FROM DECISION OF GENERAL APPRAISERS.—In appealing from a decision of the Board of General Appraisers, an importer set forth in his petition a claim based on a paragraph of the tariff act not referred to in his protest filed with the collector and passed on by said board. *Held*, that this is not permissible under section 14, customs administrative act of June 10, 1890, which prescribes that the decision of the collector "shall be final and conclusive, unless within ten days after but not before" liquidation of the importer's entry the importer shall file with the collector a protest "setting forth therein the reasons for his objections" to the assessment.

CONSTRUCTION OF PROTEST—COMPANION PROTEST.—The Board of General Appraisers had before it several protests relating to the classification of certain merchandise, one of which stated objections to the collector's assessment that were not stated in the other protests. *Held*, that the presence of the former protest was of no moment as affecting the construction of the latter protests.—*U. S. v. Bayersdorfer* (C. C. A.), T. D. 24923.

Sufficiency of Protest.—In construing section 14, customs administrative act of June 10, 1890, providing that protests against the assessment of duty by collectors of customs on imported merchandise shall set forth "distinctly and specifically" the reasons for objection to the assessment, *Held*, that a protest is not sufficient that claims that the merchandise is free of duty under a certain paragraph of the tariff act, though as a matter of fact it is free of duty under another paragraph of the free list of the same act, to which the attention of the collector is not called in the protest.—*U. S. v. Knowles* (C. C. A.), T. D. 24922.

The words "or at the appropriate rate and under the proper paragraph, according to the component material of chief value," printed on a protest, are not sufficient to sustain a recovery of excessive duties, in the absence of a specific claim under the correct paragraph of the tariff. *U. S. v. Bayersdorfer* (T. D. 24923) followed.—T. D. 24907 (G. A. 5537).

In construing section 14, customs administrative act of June 10, 1890, which requires that "the decision of the collector shall be final unless the owner, importer, consignee, or agent shall within 10 days after but not before liquidation give notice in writing to the collector," *Held*, that a collector of customs is without legal authority to waive this requirement.—T. D. 24846 (G. A. 5512).

Amendment of Protests.—Protests must be filed within 10 days after the liquidation of the entry. They can not be amended or corrected after the 10-day limit prescribed by section 14 of the customs administrative act. *Sherman v. U. S.* (5 C. C. A., 101; 55 Fed. Rep., 276).

A protest left on the desk of a deputy collector within the 10 days prescribed by section 14 of the customs administrative act, but subsequently withdrawn for amendment and correction, and then filed more than 10 days after the liquidation of the entry, comes too late for consideration.—T. D. 24786 (G. A. 5478).

Testimony Taken in One Case Applied to Another.—The board of classification possesses the power, and the practice is usually followed, to allow testimony taken in one case to be applied to another when the merchandise in both cases is of the same character.—T. D. 24715 (G. A. 5437).

Admissibility and Essentials of Affidavits.—While affidavits are admissible in cases heard before the board of classification, within the discretion of the board as the justice of the case may require, it is essential that, when made on information and belief, they should contain a statement of the source of the information and of the grounds of the belief. An affidavit by an importer in support of his protest against the classification of a collector of customs, which fails to show that he has any personal knowledge whatever as to the matter, held insufficient to rebut the legal presumption that the collector's classification is correct.—T. D. 24703 (G. A. 5433).

Head-Money Tax.—Section 14, customs administrative act of June 10, 1890, authorizing the board of classification of United States general appraisers to decide cases arising on protests against decisions of the collectors of customs "as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage)," does not give said board jurisdiction of cases where protest is made against the exaction of the so-called head-money tax collected "for each and every passenger who shall come by steam or sail vessel from a foreign port to any port in the United States," as required by the act of August 3, 1882 (22 Stat., 214; U. S. Comp. St., 1901, p. 1288), as amended by the act of August 18, 1894 (28 Stat., 390; U. S. Comp. St., 1901, p. 1303). In *re* Forget, G. A. 2835 (T. D. 15525), followed.—T. D. 24625 (G. A. 5408).

Protest on Reliquidation.—In construing section 14, customs administrative act of June 10, 1890, which requires that protests must be made within 10 days after liquidation of the entry covering the merchandise to which the protest relates, *Held*, that a voluntary reliquidation of an entry by a collector, which results in a change in the rate or the amount of duty, is, for the purpose of filing protests, to be considered as an abandonment of any earlier liquidation, and as reopening the whole entry so that protest can legally be made against the decision of the collector in any particular, even though his decision passed unchallenged by protest when the entry was previously liquidated. In *re* Fleitmann, G. A. 738 (T. D. 11563), overruled; *Robertson v. Downing* (127 U. S., 607; 8 Sup. Ct. Rep., 1328); *Sgobel v. Robertson* (not reported); In *re* Strauss, G. A. 2743 (T. D. 15309), and In *re* Hartmann, G. A. 3610 (T. D. 17436), followed.—T. D. 24623 (G. A. 5406).

Illegal Reliquidation.—The decision of the board of classification as to the issues raised by a protest is "final and conclusive," except where an application for review is made in the manner provided by section 15, act of June 10, 1890 (26 U. S. Stat., p. 131); and the action of a collector of customs in assuming to reliquidate an entry otherwise than in accordance with the mandate of the board, no appeal having been taken from the board's decision, is null and void.—T. D. 24459 (G. A. 5346).

Sufficiency of Protest.—A protest merely claiming an article to be waste without specifying the rate or provision under which the merchandise is properly dutiable is sufficient. *U. S. v. Shea* (114 Fed. Rep., 38), *U. S. v. Salambier* (170 U. S., 621), and other cases cited and followed.—T. D. 24244 (G. A. 5283).

Protests Limited to Cases Specified Therein.—Importers made a protest referring to "the cases described in the schedule below," and in said schedule

specified a particular item of the invoice. *Held*, that the protest can not be construed as relating in addition to another item of similar merchandise on the same invoice. In *re* Pollman (G. A. 2127), In *re* Heilbrunn (G. A. 2484), and In *re* Goldenberg (G. A. 2677) followed.—T. D. 24136 (G. A. 5250).

Merchandise from Philippine Islands.—Under section 8, act of March 8, 1902, applying the provisions of the customs administrative act of June 10, 1890, as amended by the tariff act of 1897, to articles imported into the United States from the Philippine Islands, the jurisdiction of the Board of General Appraisers is extended to all cases involving the assessment of duty on such articles.—T. D. 24051 (G. A. 5226).

Seized Goods.—The jurisdiction of the board of classification does not extend to a case involving the dutiability^{*} of merchandise which has been smuggled or otherwise introduced surreptitiously into the country, without entry at any customhouse.

It is the duty of a collector of customs to transmit all protest cases arising before him to the board, irrespective of his opinion as to the jurisdiction of the board over the case.—T. D. 24014 (G. A. 5211).

Forfeiture—Jurisdiction.—The mere fact that an action for the forfeiture of imported merchandise is pending in a United States district court does not operate to oust the jurisdiction of the board of classification over a protest, duly filed, against the liquidation of the entry by the collector and the ascertainment of the rate and amount of duty accruing on such merchandise.

Where it is made to appear that, in any case pending before this board, the decision of the cause will involve directly or collaterally the determination of some issue in a suit for forfeiture pending in a United States district court, the board will continue the case until the final judgment of the court is ascertained.—T. D. 23749 (G. A. 5147).

Reliquidation in the Absence of Protest.—Merchandise may, without re-examination, be reclassified at a different rate of duty, and the entry reliquidated accordingly, even where the merchandise has passed from customs custody and no protest has been made.

The provision in section 14, customs administrative act of June 10, 1890, that the decision of the collector "shall be final and conclusive against all persons interested therein," in the absence of a protest by the importer within 10 days after liquidation, is a limitation upon the importer and not upon the collector.—T. D. 23655 (G. A. 5118).

Jurisdiction—Goods from Philippine Islands.—As between the contracting sovereigns, a treaty, when ratified, relates back to the time of signing, although in respect to private rights the treaty does not take effect until the exchange of ratifications. *Ex parte Ortiz* (100 Fed. Rep., 962).

Tobacco brought from the Philippine Islands more than three months after the signing of the treaty of Paris, on December 10, 1898, but before the exchange of ratifications, is not an "article imported from a foreign country," within the meaning of the enacting clause of the tariff act of July 24, 1897; and the board of classification has no jurisdiction over a case involving an exaction of duties on such tobacco paid under protest.

Since the passage of the Philippine act of March 8, 1902, the jurisdiction of the board would extend to articles coming into the United States from the Philippine Islands.—T. D. 23638 (G. A. 5116).

Amendment of Protests and Their Suspension.—Protests against decisions of collectors of customs, made in accordance with the provisions of section 14, customs administrative act of June 10, 1890, can not properly be

amended more than 10 days after the liquidation of the entries to which they relate. In *re Sherman* (49 Fed. Rep., 224) followed.—T. D. 23630 (G. A. 5108).

Jurisdiction—Imports into Hawaiian Islands.—The jurisdiction of the board of classification extends to the determination of the question whether merchandise that has been brought into a port of the United States comes from a foreign country or from another United States port; but, if the board finds the latter alternative to be true, it must dismiss the case for want of jurisdiction.—T. D. 23588 (G. A. 5097).

Jurisdiction—Goods from Hawaiian Islands.—Jurisdiction is the "power to hear and determine the subject matter in controversy between parties to a suit; to adjudicate or exercise any judicial power over them."

The board of classification has no jurisdiction in a case relating to a cargo of merchandise brought from the Hawaiian Islands to San Francisco after the passage of the act providing a government for the Territory of Hawaii, approved April 30, 1900 (31 U. S. Stat., 141). Insular Tariff cases (182 U. S., 221) followed.—T. D. 23560 (G. A. 5092).

Merchandise from Philippines—Jurisdiction.—The jurisdiction of the board of classification of the general appraisers under the provisions of section 14 of the customs administrative act of June 10, 1890, does not extend to an appeal from a decision of collectors of customs on goods imported from the Philippine Islands when the preliminary question is whether those places were foreign countries within the meaning of the tariff laws. The Insular cases (182 U. S.; 21 Sup. Ct. Rep.) and *In re Goetze* (G. A. 4967) followed; *In re Goetze* (G. A. 4658) and *In re Crossman* (G. A. 4735) overruled.—T. D. 23417 (G. A. 5042).

Return of Protests to Collectors.—The provision in section 14 of the customs administrative act of June 10, 1890, that the Board of General Appraisers "shall" decide cases submitted by collectors of customs is mandatory and confers exclusive jurisdiction upon the board, and a protest pending before the board will not ordinarily be returned to the collector for reconsideration on the request of the protestants.—T. D. 23388 (G. A. 5037).

Filing Protests With Treasury Department.—A paper is said to be "filed" when it is delivered to a clerk or other officer to be kept by him with the other papers in the cause.

The giving of notice of dissatisfaction to a collector of customs is synonymous with filing a protest with the collector. *Davies v. Miller* (130 U. S., 284).

The sending of a letter to a Treasury official at Washington, complaining of an assessment of duty, is not such notice of dissatisfaction to the collector who assessed the duty as is contemplated by section 14 of the customs administrative act; neither does the transmission of such letter by the department to the collector for "report and return" constitute such notice.

Where the Treasury Department transmits such a letter to the collector, instructing him to accept it as due notice of dissatisfaction, the department may be deemed to have voluntarily constituted itself the agent of the importer for filing his protest, and the letter may perhaps be treated as a valid protest if placed in the collector's hands within 10 days after liquidation.—T. D. 23279 (G. A. 4990).

Jurisdiction—Porto Rican Free List.—Under section 14 of said act of April 12, 1900, the board of classification has jurisdiction to examine and decide protest cases arising upon decisions of collectors of customs on the island of Porto Rico as to the rate and amount of duties upon merchandise imported into that island from foreign countries. In *re Fritze*, T. D. 22410 (G. A. 4739) followed.—T. D. 23269 (G. A. 4988).

Substitution of Copies in Place of Lost Protests.—The board of classification has the power which belongs to a court to allow the substitution of a copy for the original of a document forming part of the record of a case before it when such original is proved to have been lost. *Marine v. Lyon* (65 Fed. Rep., 992; 13 C. C. A., 268).—T. D. 23167 (G. A. 4957).

Protest, Sufficiency of.—Where the objection to the collector's action is so distinctly and specifically set forth that there can be no reasonable doubt as to the paragraph of the tariff which the importer relies on, a mistake in citing the number of the paragraph will not invalidate the protest. *Arthur v. Morgan* (112 U. S., 495); *Heinze v. Arthur's Executors* (144 U. S., 28).—T. D. 23165 (G. A. 4955).

Special Hearings.—A special hearing will not ordinarily be granted by the board of classification where a protest raises only questions of law which have already been adjudicated and settled, especially where the hearing applied for must be held at a distant port.—T. D. 23111 (G. A. 4940).

Right of Protest on Withdrawal of Goods from Bonded Warehouse.—The right of protest against the decision of the collector as to the rate or amount of duty upon imported merchandise provided in section 14 of the customs administrative act of June 10, 1890, must be availed of by the importer at the time of the liquidation of the entry, and in the case of withdrawal of goods from bond there is no new right of protest after the lapse of 10 days from the date of liquidation unless between the date of such liquidation and of withdrawal there has been a change in the law and the collector has refused or neglected to reclassify the goods in accordance therewith. In *re Henry* (G. A. 4865) distinguished.—T. D. 23074 (G. A. 4930).

Right of Protest on Withdrawal of Goods From Bonded Warehouse After Change in Law.

CHANGE IN RATE OF DUTIES WHILE GOODS ARE IN BOND.—When a change in the rate of duties occurs while goods are in bond, the law requires the collector, of his own motion, to reliquidate all entries on the basis of the new rates. He may do this at or before the time of withdrawal of the goods from bond. *Merritt v. Cameron* (137 U. S., 542; 11 Sup. Ct. Rep., 174) followed.

COLLECTOR'S FAILURE TO RELIQUIDATE.—The failure or refusal of the collector to make such reliquidation and adjustment before final withdrawal from bond is equivalent to a decision by him that the original liquidation was correct; and a protest made within 10 days from the date of such withdrawal is seasonably filed, and will entitle the importer to an adjudication of his claim that the new rates are applicable to his goods.

PROTESTS MADE BEFORE WITHDRAWAL.—Where a protest is lodged with the collector within 10 days from the time the new rates of duty become operative, but before the collector has reliquidated the entry to conform therewith, and before the goods have been withdrawn from bond, such protest is premature and not entitled to consideration on its merits.—T. D. 22805 (G. A. 4865).

Date of Liquidation.—The date of the "liquidation and ascertainment of duties" mentioned in section 14 of the customs administrative act of June 10, 1890, "within 10 days after but not before" which protests must be filed, is the date of final liquidation stamped on the entry by the collector, after the statement of the duties has been certified by the naval officer to be correct, as provided in article 1416, Customs Regulations, 1899, and is not the date of the original estimation of duties, which, as provided in article 410 (ib.), is tentatively made by the collector at the time of entry, before examination and appraisement of the merchandise.

Accordingly, a protest filed with the collector within 10 days after such original estimate, but before the final liquidation, is invalid as being made prematurely.—T. D. 22698 (G. A. 4833).

Jurisdiction—Injury to Merchandise After Importation.—The jurisdiction of the Board of General Appraisers does not extend to cases coming within the purview of section 2984, the jurisdiction conferred upon the Secretary of the Treasury by that statute being exclusive. In *re* Rugiero (G. A. 1024); *Ferry v. U. S.* (85 Fed. Rep., 550; 29 C. C. A., 345).—T. D. 22689 (G. A. 4830).

Tonnage Duties and Light Dues.—Protests based on the exaction of duties on tonnage will be dismissed by the board of classification for lack of jurisdiction, that class of cases being expressly excepted from those which the board is invested with authority to decide under section 14 of the customs administrative act of June 10, 1890. But protests will be entertained when relating to light dues.—T. D. 22507 (G. A. 4773).

Jurisdiction—Marking of Packages.—The Board of General Appraisers has jurisdiction to determine the legality of a Treasury regulation making charges for the supervision of such marking of packages, as it "relates to dealings with imported merchandise in the regular course of passing the same through the customhouse," and does not affect the "lawful entry, regular invoice, or appraisement" of the goods. In *re* Chichester (48 Fed. Rep., 281) followed.—T. D. 22496 (G. A. 4767).

Indefinite Protests.—Where the protest relates to and describes goods different in statutory particulars from those the subjects of said protest, and where the protestant relies upon a paragraph or portion of a paragraph, act of July 24, 1897, inapplicable to the merchandise, the protest will be overruled. "The importer must prevail, if at all, only upon the grounds stated in his protest." In *re* Austin (47 Fed. Rep., 873), *Chung Yune v. Kelly* (14 Fed. Rep., 639), and G. A. 2627 followed.—T. D. 22482 (G. A. 4763).

Similitude Clause.—To entitle an importer to the benefit of the similitude clause, on appeal by protest from the action of the collector, that clause must be claimed in the protest. *Hahn v. Erhardt* (78 Fed. Rep., 620) followed.—T. D. 22161 (G. A. 4699).

Sufficiency of Protest.—A protest containing the claim that the goods in question "being chiefly composed of cotton are dutiable at the various rates prescribed in Schedule I" is insufficient, in that it does not set forth "distinctly and specifically the reasons for" the objections of the protestant, as required in section 14 of the customs administrative act of June 10, 1890, being too vague to designate even in substance that provision in the tariff act under which the protestant claims. *Presson v. Russell* (152 U. S., 577) cited.—T. D. 21640 (G. A. 4566).

Protest Filed on Sunday.—In computing the 10 days after liquidation within which a notice of protest must be filed with the collector under section 14 of the customs administrative act of June 10, 1890, if the tenth day falls on Sunday, that day can not be excluded.

The filing of a protest on Sunday, like the service of other civil process on that day, is illegal. A protest can not be officially received by a collector at such a time; and if in fact it is received by him, can at most be considered only as official in his hands when Sunday has expired.

A protest lodged with the collector on Sunday, that day being the tenth day after liquidation, is void.—T. D. 21628 (G. A. 4563).

Legality of Reappraisal Proceedings.

BOARD OF CLASSIFICATION.—A board of three general appraisers, sitting as a board of classification, under the provisions of section 14 of the customs administrative act of June 10, 1890, is invested with jurisdiction coextensive with that conferred on the courts by section 15 of said act, to review, upon protest duly filed, the regularity, and to pass upon the validity, of an appraisal made by a board of three general appraisers organized and acting under the authority conferred on them by section 13 of said act.

BOARD OF REAPPRAISEMENT.—Such a board of three general appraisers, sometimes designated as a board of reappraisal, is a statutory tribunal, with limited powers and jurisdiction; and any decision made by it transcending its jurisdiction is null and void.—T. D. 21498 (G. A. 4521).

Jurisdiction.—The Board of General Appraisers, sitting as a board of classification, under section 14 of the act of June 10, 1890 (26 U. S. Stat., 131), is invested by law with authority to pass on the legal validity of regulations issued by the Secretary of the Treasury and designed for the convenient administration of tariff laws; and this jurisdiction is commensurate with that of the courts.—T. D. 20990 (G. A. 4408).

The jurisdiction of the board of classification, as conferred by section 14 of the act of June 10, 1890, extends only to the review of the "decision of the collector as to the rate and amount of duties," etc.; it does not include a case where the collector reliquidates an entry under orders from the Secretary of the Treasury by virtue of some special legislative authority empowering the Secretary to make such an order. In such case the collector is the mere agent of the Secretary, and the decision reached is not "the decision of the collector," but that of the Secretary. In *re Riker* (G. A. 3815); *U. S. v. Leng* (18 Fed. Rep., 15).

The board will not consider the propriety of a reliquidation made under a department order by the authority vested in the Secretary by the proviso to section 25 of the tariff act of 1894, relating to the value of foreign coins, and authorizing the assumption of values therefor different from those estimated by the director of the mint, and promulgated quarterly by the Secretary of the Treasury.—T. D. 20134 (G. A. 4288).

Discriminating Duty Under Section 22 of the Act of July 24, 1897.—The board of classification of United States general appraisers, being charged by law with the duty of examining and deciding all cases properly before it, acts judicially, and is not at liberty to affirm pro forma a decision of a collector of customs in a doubtful case and cast on the United States courts the sole responsibility of construing an ambiguous statute. It is not only the right, but also the duty, of members of that board to decide all issues according to their sound judgment and discretion and the rules of legal construction as settled by the courts. *Marine v. Lyon* (65 Fed. Rep., 992); In *re Van Blankensteyn* (56 Fed. Rep., 475) followed.—T. D. 18915 (G. A. 4072).

Payment of Duties Before Protest is Filed.—In order to have the collector's decision (made under section 14 of the customs administrative act of June 10, 1890) reviewed on appeal by the Board of General Appraisers, if the importer's protest is filed in time, the payment of the ascertained duties within 10 days from liquidation is not a necessary precedent condition to jurisdiction by the board. *U. S. v. Goldenberg* (18 Sup. Ct. Rep., 3); and In *re Stevens* (G. A. 150) followed.—T. D. 18724 (G. A. 4037).

Tentative Liquidation.—So-called liquidations of entries of imported merchandise, made under the instructions of the Secretary of the Treasury, Circular No 61 (Synopsis 17978), dated April 5, 1897, were designed to be mere pro-

visional or tentative liquidations, and do not constitute such final decisions of the collector, under section 14 of the act of June 10, 1890, as are made subjects of protest, and of decision on appeal to the Board of General Appraisers.—T. D. 18634 (G. A. 4032).

Mixed Merchandise.—Where an importer mixes en masse two kinds of goods, and it is impracticable or impossible to separate them, a protest, the claim in which covers the entire importation, must be overruled, even though some of the goods might be subject to the classification claimed in the protest.—T. D. 18616 (G. A. 4014).

Sufficiency of Protest.—Dry smoked fish assessed under paragraph 211, act of 1894. The importer protested, "I claim that said goods are smoked fish," not indicating the paragraph under which he claims that the fish should be assessed. Held insufficient.—T. D. 18417 (G. A. 3974).

Tea Dust, Jurisdiction of Board Limited to Standards.—Under the act of March 2, 1897, the question of the standards of tea is not committed to the board, but to a tea commission. The board is limited to the finding of fact whether the tea is up to the standard prescribed.—T. D. 18416 (G. A. 3973).

Seized Goods.—Board without authority to entertain an appeal against charges incurred where the goods are held under seizure on proceedings for forfeiture.—T. D. 18411 (G. A. 3968).

Jurisdiction—Unlading Officers' Charges.—The action of the collector in requiring payment of unlading officers' charges (under articles 1057 and 1058 of the regulations made under authority of R. S. 251) and expenses (under authority of T. D. 12765, following section 29, act of June 26, 1884) is not subject to review by the board.—T. D. 17852 (G. A. 3786).

Jurisdiction—Expense of Stamping Cigarettes.—The board has no jurisdiction to review the action of the collector in exacting from the purchaser of cigarettes at a public sale of unclaimed merchandise the expense of stamping such cigarettes under R. S. 3402.—T. D. 17851 (G. A. 3785).

Unsigned Protest.—Unsigned protests overruled as nullities under section 14 of act June 10, 1890.—T. D. 17822 (G. A. 3756).

Defective Protest.—"I hereby wish to protest against a rate of 25 per cent for duty being put on my entries of horn strips, which have been coming into the port of Boston for some months past," held defective.—T. D. 17734 (G. A. 3720).

Unauthorized Protest.—A protest drawn and signed by attorneys at the request of a customs broker who had no authority from the importer to employ the attorneys is an unauthorized protest and is void.—T. D. 17631 (G. A. 3679).

Declaration was made that the goods were purchased by Adams & Howe. They were consigned to Adams & Howe, who made the entry, and M. L. Orcutt, a member of the firm, made the owner's oath. The protest was signed by J. M. Keane, who would seem to be the resident agent of the shipper. Protest unauthorized.—T. D. 17629 (G. A. 3677).

Protest Not Filed in Time—Theatrical Effects Under Bond.—Theatrical properties imported October 27, 1894, which were accorded the privilege of paragraph 596, act of 1894. Entry liquidated May 3, 1895. Goods not exported at the expiration of six months and the Secretary extended the time six months under the authority conferred by paragraph 596. Liquidated duties paid October 30, 1895, and goods taken by importer, a bond having been given. Protest filed November 1, 1895, more than 10 days after liquidation of

entry, but within 10 days after payment and delivery of the goods. *Held*, that the protest was filed too late.—T. D. 17411 (G. A. 3602).

Vessel's Equipment, Electric Launch; Jurisdiction.—An electric launch claimed to be a part of the necessary equipment of the steam pleasure yacht *Hermione* was sent from Scotland in advance of the yacht and invoiced and entered for duty. It was assessed as a manufacture of metal and claimed not to be imported merchandise, but necessary equipment. *Held*, that the question is substantially the same as that raised in *Ex parte Fassett* (142 U. S., 479), in which it was decided that the jurisdiction of the board does not extend to the question whether or not an article is imported merchandise within the meaning of the tariff laws, and that the board has no jurisdiction.—T. D. 17405 (G. A. 3596).

Application for Equitable Relief to Secretary of the Treasury.—Custom-house brokers apply to the Secretary of the Treasury for relief. Letter transmitted to the collector. The collector forwarded the letter to the board with this indorsement: "By order of the department in its letter of March 26, 1895, this paper is received as a protest lodged nunc pro tunc, i. e., although received at his office on March 27, 1895, is received as if lodged on March 11, 1895, the date that it was forwarded to the department." *Held*, (1) that the brokers were not lawfully authorized to file a protest; (2) that the paper is not in form and substance a sufficient and valid protest; (3) that if it is sufficient it was not given to the collector within the time required by law; (4) that the time limit within which a protest must be filed can not be extended.—T. D. 17390 (G. A. 3581).

Rule for Suspending Decision by Board of General Appraisers.—The rule of the board with regard to the suspension of cases is well established and to this effect: That appellants must show that the case in which the rule is invoked involves an issue at the time under appeal and pending in some court having a right to review the decisions of the board.—T. D. 16847 (G. A. 3366).

Jurisdiction in Questions of Weight, Gauge, etc.—The board has no jurisdiction to review the returns made according to law by the United States weighers, gaugers, or measurers acting within the line of authority conferred upon them by R. S. 2890.—T. D. 16637 (G. A. 3282).

Protest Against Suing on Bond.—The board has no jurisdiction of a protest made against suing on a bond (Customs Regulations, 1892, art. 1009).—T. D. 16572 (G. A. 3268).

Protests Invalid in Condemnation Proceedings.—The board has no jurisdiction of a protest against the seizure of articles seized in condemnation proceedings under section 10, act of August 28, 1894.—T. D. 16299 (G. A. 3128).

Lost Protest.—Protest was filed within 10 days and was lost by the Government officer whose duty it was to receive it. The importers thereupon filed a copy. *Held* sufficient.—T. D. 16018 (G. A. 3042).

Error in Middle Initial of Name.—Protest filed by Robert F. Thompson, while the entry was made by Robert M. Thompson. *Held* sufficient, as the law recognizes only one Christian name.—T. D. 15968 (G. A. 2992).

Protests on Withdrawal Entries.—Goods imported at New York in March, 1894, and on October 2, 1894, the goods were entered for warehouse and transportation to Boston, where a combined entry for rewarehouse and withdrawal was made on October 26. Protest was made against this entry. The protest held insufficient because: (1) The entry was complete at the original port; (2) the liquidation is part and parcel of the entry, and hence (3) the act com-

plained of being that of the collector of the original port the protest must run to and against him.—T. D. 15671 (G. A. 2852).

Jurisdiction in Forfeiture Proceedings.—Goods seized for forfeiture, delivered to importers under R. S. 938, when the Secretary granted a conditional warrant of remission on the payment of lawful duties and costs. The importer paid and protested against the amount. *Held*, that the board has no jurisdiction.—T. D. 15520 (G. A. 2830).

Jurisdiction—Importations by Mail.—The *Revue Elegant Journal de Modes*, lithographed and colored fashion plates imported by mail, assessed for duty under paragraph 420, act of 1890, and claimed to be free under paragraph 657 as a periodical. *Held*, that importations by mail being prohibited by law except when made under postal treaties and conventions, and being subject to a fine equal to the duty (art. 305, Reg. 1892), the board has no jurisdiction.—T. D. 15327 (G. A. 2761).

Protests Filed After Reliquidations.—Protest on January 28, 1893, and an additional duty found due which was not paid and the liquidation canceled and abandoned by the collector. On February 27, 1893, the collector voluntarily reliquidated the entry against which protest was lodged March 3. *Held*, that the final liquidation was on February 27 and that the 10 days run from that date.—T. D. 15309 (G. A. 2743).

Protests Invalid when Based Upon an Infraction of the Statute.—One case containing one bottle of still wine was assessed for duty at \$1.60, as containing not less than one dozen bottles, under paragraph 336, act of 1890. The importer claimed free entry as a sample, or that it should be assessed as one-twelfth of a dozen bottles. *Held*, that the importation of wine in packages of less than one dozen bottles is prohibited and that a protest based on a violation of a statute is invalid.—T. D. 15212 (G. A. 2705).

Clerical Errors in Invoices.—The board has jurisdiction of a protest against the exaction of a penalty accruing through a clerical error. Clerical error corrected.—T. D. 14946 (G. A. 2575).

Failure to Specify Particular Paragraph.—Protest claimed certain earthenware to be dutiable at 55 per cent under the act of 1890, but did not specify the paragraph. Only two paragraphs provide a rate of 55 per cent for earthenware. *Held* sufficiently specific.—T. D. 14932 (G. A. 2561).

Protests, Two Sets of.—Two sets of protests, one by the agent at the port of entry and the other forwarded by the principal. Both entertained and considered as alternative protests.—T. D. 14922 (G. A. 2551).

Evidence as to Filing in Time.—Protest dated June 6 and the importer testifies that he deposited it on the desk of the protest clerk a few minutes before 4 o'clock on that day. The record shows it was not filed until the 8th. *Held*, not to have been filed on the 6th.—T. D. 14855 (G. A. 2538).

Jurisdiction—Disallowance of Drawback.—The board has no jurisdiction of the question of the disallowance of drawback.—T. D. 14522 (G. A. 2333).

Protests—Sufficiency of.—Protest is "against your decision, liquidation, and rate and amount of duties assessed by you on our importation of jute canvas, per Corean, entered February 20, 1893, entry No. 30374, entry liquidated April 7, 1893, C. N. 1183 and others." *Held* sufficient as to C. N. 1183, but not sufficient as to the other items of the invoice.—T. D. 14458 (G. A. 2304).

Protest Claiming Wrong Paragraph and Correct Rate.—Cotton braids known as feather-stitched braids claimed to be dutiable under paragraph 355 as manufactures of cotton. The importer claimed that this was an error, the

intention being to claim under paragraph 354. *Held*, that a protest claiming under the wrong paragraph, though correct rate, can not be allowed.—T. D. 14247 (G. A. 2211).

Error in Enumerating Paragraph.—The protest claimed of a silk fabric that "said goods are dutiable under paragraph 415, Schedule L, act of October 1, 1890, at the rate of 50 per cent ad valorem because they are manufactures of silk not otherwise provided for." *Held*, that the reference to paragraph 415 instead of 414 was an error that became apparent when we consider that paragraph 415 is not in Schedule L and does not provide for silk manufactures and that the protest is sufficiently specific.—T. D. 14133 (G. A. 2132).

Relief Restricted to Claims in Protest.—The protest need not specify the particular cases containing the merchandise, but when it is restricted to goods contained in certain cases it is not incumbent on the collector or the board to give consideration to articles contained in other cases.—T. D. 14076 (G. A. 2127).

Protests on Goods Entered for Warehouse and Transportation.—Where goods are entered for warehouse and transportation the protest must be filed at the original port of entry and within 10 days.—T. D. 13584 (G. A. 1856).

Description in Protest Differs from Invoice.—Merchandise invoiced as toluidin sulfosaure, while the protest refers to it as "thio chromogen." *Held*, that the collector is not required to look outside of the protest, and it does not furnish sufficient information.—T. D. 13567 (G. A. 1839).

Protests; When Insufficient to Allow Reliquidations After One Year.—A protest as to the question of weight did not reopen the question as to the rate of duty.—T. D. 13550 (G. A. 1822).

Reference to Heyl's Digest Instead of Statute in Protest.—Protest intended to claim that the article was dutiable under section 4, act of 1890. It referred to paragraph 773 B when there is no such paragraph. The importer was misled by Heyl's Digest, which gives section 4 as paragraph 773-B. *Held* sufficient.—T. D. 13298 (G. A. 1678).

Protests Against Liquidations on Pro Forma Entries.—Protests against liquidations on pro forma invoices are subject to the conditions and exactions imposed by this section and must be filed within 10 days after the ascertainment and liquidation of duties.

The omission of the collector to stamp the date of a liquidation on an invoice does not imply that there was no liquidation, but merely leaves in doubt the date.—T. D. 13208 (G. A. 1629).

Protest Sent to Collector Through the Mails.—Duties liquidated November 6 and protest mailed by registered letter at Hartford, which reached St. Albans November 16, but did not come into the hands of the collector until the 17th. *Held*, not in time.—T. D. 13204 (G. A. 1625).

Secondary Protests Invalid.—Protests sustained and entries liquidated in accordance with claim of importers. They afterwards filed a second protest. *Held*, that the only remedy of the importers was by appeal to the circuit court and that the second protest is invalid.—T. D. 13079 (G. A. 1584).

Warehouse Charges.—Section 14, act of June 10, 1890, authorizes importers to file protests only against fees and exactions paid to the Government through the collector. It does not authorize protests against payments made to the owners of private bonded warehouses for refunding of which the Government is not responsible.—T. D. 13057 (G. A. 1562).

Protests Must Claim Correct Rate.—Glass bottles with rubber stoppers assessed under paragraphs 103 and 106. The protest claimed that the duty should be 1 cent a pound, and the board found that the merchandise was duti-

able at 1½ cents a pound. *Held*, that the protest must claim the correct rate, and that having claimed 1 cent a pound to be the rate under paragraph 103, when the articles are dutiable at 1½ cents a pound, the action of the collector must stand.—T. D. 12707 (G. A. 1356).

Protests Unauthorized.—Protest overruled because it did not appear that the person filing it is the owner, importer, agent, or consignee or has any interest in the goods which would justify a protest by him.—T. D. 12255 (G. A. 1069) ; T. D. 12443 (G. A. 1181).

Dutiable Weight on Withdrawals from Warehouse.—Where goods are withdrawn from the warehouse, a protest against the assessment of duties on the weight at the time of the entry rather than at the time of withdrawal (sec. 50, act of Oct. 1, 1890), filed within 10 days from the date of liquidation, is in time.—T. D. 12374 (G. A. 1146).

Protests, Sufficiency of.—Lenses of glass, polished, were assessed at 60 per cent. The protest was against the assessment of duty at 45 per cent instead of 60 per cent. *Held*, that this inadvertence did not render the protest invalid.—T. D. 12020 (G. A. 933).

Protests on Reliquidations.—Entry liquidated October 24, 1890, on a basis of 9 per cent advance and no dissatisfaction expressed. Clerical error discovered in the liquidation and that the advance exceeded 10 per cent. Entry reliquidated and additional duty imposed. Appeal for reappraisal, but before action it was withdrawn. The appraiser then reduced value on certain items and returned the invoice December 10. Entry reliquidated January 19, 1891, and protest filed January 27. *Held*, that the reliquidation of January 19, not having changed the status of the invoice but having placed the importers in the position they occupied under the liquidation of October 24, such reliquidation did not restore the right of protest which had expired.—T. D. 11563 (G. A. 738).

Protests, Indefinite.—A protest which claimed that Canadian hay and straw was intended for feed and bedding for Canadian cattle in bond en route for Liverpool, and therefore free, held to be indefinite.—T. D. 11543 (G. A. 718).

Protests—Can Not Reserve Rights.—A protest stated: "We reserve ourselves the right to make further protest." *Held*, that the right to protest is limited to a period of ten days from the date of liquidation, after the expiration of which time protests can not be filed nor can one on file be amended or changed in any respect.—T. D. 11095 (G. A. 538).

Protests to be Accompanied by Invoices, Entries, Samples, Full Descriptions, etc.—Collectors should forward with protests the invoice and entries covering the merchandise, also samples, if the goods are sampleable, together with a full and accurate description of the merchandise, and all reports, testimony, and facts in their possession that may be of service to the board.—T. D. 10928 (G. A. 423).

Notice of Decisions by the Board of General Appraisers.—Importers are bound to take notice of the decisions of the Board of General Appraisers without being formally advised when a decision is made.—T. D. 10754 (G. A. 307).

Sufficiency of Protest.—The protest claimed "that the above-described merchandise is burlaps, is commercially known as such, is bought and sold as burlaps, and only dutiable as such at the rate of 35 per cent ad valorem, under the act of March 3, 1883." Neither of the two paragraphs relative to burlaps imposes duty at 35 per cent. The importer having failed to designate under which paragraph he seeks relief, his protest is held not to be sufficiently specific.—T. D. 10649 (G. A. 233).

Payment of Duties Before Protest.—Protests should not be transmitted to the board until duties are paid.—T. D. 10536 (G. A. 186).

Protests—Not Specific.—Protest that the liquidation and assessment were illegal, contrary to law, and contrary to the Constitution of the United States held not specific.—T. D. 10531 (G. A. 181).

Protests—Alternate Claims.—The only question is whether the protest is vitiated by setting out several multifarious grounds which are inconsistent one with another. The statute manifestly does not confine the protestant to a single ground, because it authorizes him to state "the reasons for his objections." He may assign many "objections," and these may be based on a multitude of "reasons." The statute so declares, and, inasmuch as Congress has declined to limit the number of objections or reasons, the courts can not undertake to do so.—T. D. 10487 (G. A. 137).

Protests Filed Prior to August 1, 1890.—The board has no jurisdiction of a protest filed prior to August 1, 1890.—T. D. 10228 (G. A. 6).

Reappraisement—Right to.—Merchandise entered October 11, appraised October 13, advanced in value and liquidated same day and importer notified. On October 15 additional duty paid and protest filed. *Held*, that the action of the collector was irregular, the invoice having been liquidated before notice to the importer (art. 462), and he should be notified that he still has the right to demand a reappraisement.—T. D. 10475 (G. A. 125).

Sufficiency of Protest.—The collector having classified certain glass jars containing preserves as "vials" under paragraph 88, act of 1894, the importer protested that "under said paragraph there was no duty on any filled bottles, or on 'bottles,' exceeding three-fourths of a cent a pound. Our bottles are not vials. They are not merchandise, but the envelopes of merchandise, and pay no separate duty." *Held*, that this was a sufficient protest.—*Smith v. U. S.* (C. C.), 91 Fed. Rep., 757.

When an importer intends to rely upon the similitude clause for the purpose of identifying his merchandise with some enumerated article, and means to place his objection upon the ground that the collector has not given due effect to that provision, he should state the fact in his protest, and if he fails to do so his objection is not stated distinctly and specifically within the meaning of the statute. A protest claiming that the articles are dutiable under the provisions imposing a duty on precious stones is insufficient to raise the question whether the articles should have been classified as precious stones by force of the similitude clause. Sustaining the circuit court.—*Hahn v. Erhardt* (C. C. A.), 78 Fed. Rep., 620.

A protest properly describing the goods and claiming correctly that they were free of duty was held sufficient, notwithstanding that it cited paragraph 646, tariff act of 1894, instead of paragraph 677, tariff act of 1897. Goods were entered for warehouse under the former act and withdrawn for consumption under the latter.—*Shaw v. U. S.*, 122 Fed. Rep., 444; reversing 117 *id.*, 366.

A protest enumerating the wrong paragraph and the wrong classification of the goods, but claiming the correct rate, held sufficient.—*U. S. v. Shea*, 114 Fed. Rep., 38.

A protest against the assessment of duty on an importation of glass under paragraph 95, act of 1894, with 10 per cent added under paragraph 97 on account of the glass being beveled—the ground of objection being that the glass, which was described in the protest as cylinder and crown glass, was only dutiable under paragraph 92—is insufficient to raise the question, on review, whether the additional duty under paragraph 97 was correctly imposed, conced-

ing the importation to have been dutiable under paragraph 95, on the claim that it should have been classified thereunder as "looking-glass plate." Sustaining the Board of General Appraisers.—*Hempstead v. U. S. (C. C.)*, 94 Fed. Rep., 484.

Where a reference to three paragraphs of the tariff was necessary to ascertain the rate of duty applicable to leather gloves, a protest that enumerated only the first paragraph, but mentioned the correct rate of duty assessable, was held to be sufficient.—*In re Claffin*, 113 Fed. Rep., 944.

A protest by an importer, addressed to the collector and signed by the importer, saying, "I do hereby protest against the rate of 50 per cent assessed upon chocolate imported by me, Str. La Bretagne, June 23/91, import entry 96656—M. S. No. 52/53, I claiming that the said goods, under existing laws, are dutiable at 2 cents per pound and the exaction of a higher rate is unjust and illegal. I pay the duty demanded, to obtain possession of the goods, and claim to have the amount unjustly exacted, refunded," is in the form and substance a sufficient compliance with this section.—*U. S. v. Salambier*, 170 U. S., 621.

Sweetened chocolate manufactured from crude cocoa was assessed for duty at 50 per cent under paragraph 239, act of 1890, as "chocolate confectionery" or assimilated thereto. The importer claimed that it was dutiable under paragraph 318 as "chocolate" or under section 4 as a nonenumerated article. The protest did not mention paragraph 319. The article found to be dutiable under paragraph 319, but protest not sufficient.

Importers are confined to such grounds of objection as are distinctly and specifically set forth in their protests.—*In re Austin (C. C.)*, 47 Fed. Rep., 873.

A protest claiming goods free of duty under two different paragraphs, neither of which covered them, was held to be sufficient, the goods being free of duty by virtue of a third paragraph not named in the protest.—*Well v. U. S.*, 124 Fed. Rep., 1006.

A protest which clearly points out the facts and reasons why certain goods should be admitted free of duty is not bad because it refers to a statute not in existence at the time, and such reference does not relieve the collector from proceedings under existing laws.—*Boussod Valadon Co. v. U. S. (C. C.)*, 66 Fed. Rep., 718.

A protest which claimed the goods to be dutiable as manufacture of paper under one paragraph, when their proper classification was paper not specially provided for under a different paragraph, was held sufficient, the rate of duty being the same in both.—*U. S. v. Hunter*, 124 Fed. Rep., 1005.

Where the only question of difference between an importer and the collector, with reference to duty on goods entered on July 24, 1897, was as to whether they were dutiable under the act of 1894 or the act of 1897, they having been first appraised under the former and afterwards reclassified under the latter, a protest which distinctly claims that they should have been assessed under the act of 1894 is sufficient although it does not specify the particular provisions of either act which were held or claimed to be applicable.—*In re Hagop, Bogigian Co.*, 104 Fed. Rep., 75.

Duty assessed on sheet steel under paragraph 114 (1894), and the importer claimed that it was dutiable at two-tenths of a cent per pound but did not give paragraph or act. Protest overruled and assessment affirmed. Collector applied for revision because of the insufficiency of the protest. *Held*, that the correct duty being assessed and no one wronged, complaining or to complain, this would seem to be enough.—*U. S. v. Pilditch (C. C.)*, 99 Fed. Rep., 938.

P. & Co. imported a quantity of moss, which was classified as dyed moss, dutiable under section 4, act of 1890, as a nonenumerated manufactured article.

P. & Co. filed a protest claiming that the moss should be subject either to a duty of 10 per cent under paragraph 24 or free under paragraph 653, as they were unable to detect that the moss had undergone any process of manufacture. *Held*, that if the moss was free either under paragraph 653 or paragraph 560 the protest was sufficiently definite and precise. Sustaining the board.—*Shaw v. Prior* (C. C.), 68 Fed. Rep., 421.

Protest After Second Reliquidation.—The fact that duties paid under protest have been refunded upon a reclassification will not prevent the Government from recovering under a second reliquidation, whereby the original duties were restored, if the suit is brought within one year from the entry of the goods.

When duties paid under protest are refunded according to a second classification, the office of the protest is then fulfilled, and it can not thereafter operate to extend the period within which the Government may make a third reliquidation of the duties.

The general rule that upon the reexamination and reliquidation of duties the packages of goods must themselves be present, does not apply in the case of lenses for optical instruments, when there is no question as to their value, and it appears that a single specimen is a perfect representation of the whole importation.—*U. S. v. Fox* (D. C.), 53 Fed. Rep., 531.

Protests Lost; Copies Filed.—The importer claimed to have filed protests. Alleged copies were filed. *Held*, that the board has the same power which belongs to a court to allow the substitution of a copy of the original of a document forming part of the record of a case submitted to it, when such original is proved to have been lost.—*Marine v. Lyons* (C. C. A.), 65 Fed. Rep., 992.

Board Can Sustain Protest in Part.—When an importer protests that his invoices are dutiable under a certain paragraph, he is not concluded, so as to prevent the Board of Appraisers from adjudging that a part of the invoices are dutiable under that paragraph and a part under the classification adopted by the collector. *Davies v. Arthur* (96 U. S., 148) distinguished.—*In re Crowley* (C. C. A.), 55 Fed. Rep., 283.

Voluntary Payment of Duties.—Duties voluntarily paid can not be refunded in the absence of protest, notwithstanding that it subsequently appeared that the goods were not dutiable as imports.—*Dewell v. Mix*, 116 Fed. Rep., 664.

In an action to recover duties paid on a cargo of sugar from the Philippine Islands, the plaintiff's demurrer to the defendant's answer that the duties were paid voluntarily and without protest was overruled.—*Flint v. Bidwell*, 123 Fed. Rep., 200.

Claims in Protest.—An importer must stand on the objections made in his protest and can not vary from nor enlarge them on the trial. When an article was classified as a medicinal preparation in the preparation of which alcohol was used (par. 67), and the only ground of protest was that, conceding it to be such preparation, it was not dutiable as such, but as chemical compound, the importer can not insist, in proceedings to review the action of the board, that the classification was incorrect because it does not appear that alcohol was used in the preparation of this particular article, which might have been prepared otherwise.—*Battle & Co., Chemists, Corp. v. U. S.* (C. C.), 108 Fed. Rep., 216.

Importer Must Prove Claim.—On appeal from a decision of the collector the burden of proof is on the importer to prove that his contention is right, and if he fails the action of the collector stands, even though the collector also has selected the wrong paragraph.—*Tiffany v. U. S.* (C. C.), 105 Fed. Rep., 766.

Alternative Claims in Protest.—An importer may protest against a classification on alternative grounds, where the proper classification is doubtful, and

the fact that his protest is sustained on one of the grounds does not estop him from appealing on the ground that the other states the correct classification.—*Koechl v. U. S. (C. C. A.)*, 91 Fed. Rep., 110.

Filing of Protest by Other than Importer or Agent.—A protest filed by apparent strangers to the goods, without any intimation that the act was done for the person who swore in the invoice that he was the owner, is ineffectual; nor will the fact that the owner is connected with one of the departments of the establishment of the person making the protest authorize the inference that they were agents of the goods.—*Abegg v. U. S. (C. C.)*, 71 Fed. Rep., 960.

Protest on Shortage.—The manifest, bill of lading, invoice, and entry called for eight cases (31,000) cigars. The examiner reported and the appraiser returned the cigars, 1,100 short. The protest raised this question of shortage, and it was one affecting the amount of duties on which an appeal lies to the board. Sustaining the board.—*U. S. v. Park (C. C.)*, 77 Fed. Rep., 608.

Protest Filed Before Liquidation.—A protest filed before the ascertainment and liquidation of the duties is in contravention of the terms of the statute and can not be considered.—*In re Bailey et al.*, 112 Fed. Rep., 413.

Timeliness of Protest.—When the practice at the customhouse permits the giving of notice by leaving the protest in a certain office and such protest is left in the proper place, after business hours, on the last day but one for giving notice, the last day being a holiday (election day), on which the customhouse is closed by special order though not by law, and the notice remains in the office during such last day, it is in time and entitled to consideration. *T. D. 13865 (G. A. 2018)* reversed.—*Frankenburg v. U. S.*, 77 Fed. Rep., 606.

Reliquidation on Warehouse Goods.—Certain goods were imported in 1893, and the duties were liquidated and paid. One case of the goods went to a bonded warehouse and was withdrawn for consumption under the act of 1894, and the duties on that case were reassessed at a reduced rate under the act of 1894. The duties on the whole invoice were then added anew, without other changes, and the entry was stamped as reliquidated at that date. *Held*, that this action was not subject to protest as a new assessment and reliquidation.—*Jacot v. U. S. (C. C.)*, 84 Fed. Rep., 159.

Value of Frames Added to Paintings.—Paintings and frames imported. The appraiser noted: "Add for goods in excess of invoice" and "Add manufactures of wood." The additional duty was on frames. The protest was against the assessment of duties on frames, on the ground that "the value of same was included in the invoice amount as entered." "We therefore respectfully request that the appraiser may reconsider his classification, we claiming that the same is erroneous as returned by him." The board held that the question was one of value and the remedy an appeal for reappraisal. *Held*, that a protest which fails to show whether the objection is to the valuation or the classification is not sufficiently definite.—*Cottier v. U. S. (C. C.)*, 101 Fed. Rep., 423.

Classification by Board Other Than That Specified in Protest.—The collector classified merchandise under paragraph 373, act of 1890, as textile fabrics embroidered by hand or machinery and the importer protested that it was dutiable under paragraph 346 as cotton cloth. The board found it to be dutiable under paragraph 355 as a manufacture of cotton and ordered a reliquidation. *Held*, that the Board of General Appraisers can not go outside of the protest and find that the goods are dutiable as a class other than that

specified in the protest. 49 Fed. Rep., 224, affirmed.—In re Collector of Customs (Sherman, importer) (C. C. A.), 55 Fed. Rep., 276.

Evidence at Hearing of Protest.—Certain importers appeared before the board in support of their protests against the decisions of the collector, but as to one of said protests they offered no evidence before the board. *Held*, that they had a right to appeal to the circuit court, and that the right to bring new evidence was coextensive with the right of appeal.—*Lesser v. U. S.* (C. C.), 89 Fed. Rep., 197.

Payment of Liquidated Duty Not Necessary to Protest.—Where imported foreign goods are entered at a customhouse for consumption, the payment by the importer of the full amount of duties ascertained to be due upon the liquidation of the entry, as well as giving notice of dissatisfaction or protest, within 10 days after the liquidation of such duties is not necessary in order to enable a protesting importer to have the exaction and classification reviewed by a Board of General Appraisers and by the courts. Congress has not specifically provided that payment shall be made within 10 days as one of the conditions of challenging the action of the collector, and hence there is no warrant for enforcing any such condition.—*U. S. v. Goldenberg*, 168 U. S., 95, 103.

Value of Bottles.—Upon an importation of ginger ale in bottles the collector added the value of the bottles to that of the ale for the purpose of assessing the duty. *Held*, that the question of the propriety of such action was one of classification, not of valuation, and was properly raised by protest, not by notice of dissatisfaction.—*Dickson v. U. S.* (C. C.), 68 Fed. Rep., 534.

Collector Can Not Waive Requirements of Protest.—The action of the collector in stating, in his return to the Board of Appraisers, that the requirements of the law have been complied with by the importer does not operate as a waiver of objections on the ground of an insufficient protest. The protest being a statutory necessity, it is beyond the power of the collector to waive it.—*U. S. v. Schefer* (C. C.), 71 Fed. Rep., 959.

Failure of Importer to Appear Before Board.—It seems that if an importer who has appealed to the Board of Appraisers from the decision of the collector fails to appear pursuant to the notification of the board to show cause why the action of the collector should not be affirmed, the board is entirely justified in affirming the decision of the collector without regard to its correctness.—*U. S. v. China & Japan Trading Co.* (C. C. A.), 71 Fed. Rep., 864.

DECISIONS UNDER EARLIER STATUTES PERTAINING TO SAME SUBJECT MATTER.

Action for Duties.—C. & Co. imported on two occasions a quantity of olive oil, which they entered as "olive oil, not salad," and on which they paid the estimated duty of 25 cents a gallon, under section 5, act of July 14, 1862, and received the goods. Subsequently the appraisers returned the oil as being "olive oil, salad," and the collector then liquidated the duty at \$1 a gallon, under section 11 of the act of June 30, 1864. On one of the importations the importers protested against the rate of \$1 a gallon, and appealed to the Secretary, who approved the decision of the collector. The United States brought suit against the importer to recover the difference between the estimated and the liquidated duties. On the trial evidence was received under objections to show that the oil was "olive oil, not salad," and the jury found that it was such. The defendants then moved for judgment on this verdict. *Held*, that under section 14, act of 1864, the decision of the collector is final as to the amount of duty to be paid in all cases except where there is an appeal to the Secretary and suit brought to recover the duty as provided in said section 14.

The words "decision of the collector" mean the ascertainment and liquidation of the duties in the usual manner by the proper officers.

The evidence to show the character of the article as not justifying the collector's decision was wrongly received, and the defendants were not entitled to judgment upon the verdict.—*U. S. v. Cousinery*, 7 Ben., 251; 19 Int. Rev. Rec., 125; 25 Fed. Cas., 677.

The appraisement and liquidation of duties by the appraiser and the collector are binding and conclusive in all collateral proceedings, and in the absence of any reliquidation and reappraisement can not be disregarded or reviewed, except in the modes provided by Revised Statutes 2929, 2930, and 2931. A suit in the district court is not one of those modes. *Held*, accordingly, on demurrer, that after payment of the duties as liquidated a suit for duties alleged to be due in excess of the liquidation, on account of an alleged untrue discount, fraudulently procured to be allowed in the appraisement of value, could not be sustained.

The above rule, frequently applied in this court against importers, must be equally applied to suits brought by the United States.—*U. S. v. McDowell*, 21 Fed. Rep., 563.

Alternative Claim Lacking in Protest.—Where duties are paid under protest, on the single ground that the goods should have been classified as material for making or ornamenting hats, bonnets, etc., and not otherwise provided for, it can not be objected to defeat the classification that the goods might more properly have been put into some specific class other than that designated by the collector.—*Walker v. Seeberger* (C. C.), 38 Fed. Rep., 724.

Where duties are paid under a protest made on the sole ground that the goods should have been classified under paragraph 448, as "material for making or ornamenting hats, bonnets, etc.," instead of being classed as beads, it can not be objected that the goods might more properly have been classed as jet or imitation of jet. The protest should have been in the alternative.

The burden of proof is on the plaintiff to show by a preponderance of testimony that the goods did not properly belong to the class to which they were assigned by the collector and that they were dutiable only as claimed in the protest.

If the jury is unable to say from the testimony whether or not the goods properly belong to the class claimed in the protest, the defendant is entitled to a verdict.—*Fisk v. Seeberger* (D. C.), 38 Fed. Rep., 718.

Charges.—While an appraisement is final and not reviewable by the courts, yet an alleged inclusion of something not properly part of the market value and not dutiable at all may be challenged by protest and reexamined by the courts on appeal. *Oberteuffer v. Robertson* (116 U. S., 499) followed.—*Hermann v. U. S.* (C. C.), 84 Fed. Rep., 151.

When the importer is not dissatisfied with the appraisement of his goods per se, but only with the addition to the entry of items for cartons and packing, his proper remedy is not to apply for a reappraisement, but to protest and appeal.—*Oberteuffer v. Robertson*, 116 U. S., 499.

Claims in Protest.—The protest must state in plain and direct terms the objections to the additions made to the invoice, and it is not enough to use general expressions which may include the objections to be raised.—*Sadler v. Maxwell*, 3 Blatchf., 134; 21 Fed. Cas., 136.

Collector Must Prove Legality of Assessment.—A collector who has compelled an importer to pay a higher rate of duty than that imposed by law on such articles as are named in the invoice has the burden of proof to show the authority under which such higher duty was exacted.—*Wilkinson v. Greely*, 1 Curt., 439; 29 Fed. Cas., 1259.

Compliance with Requirements of Statutes.—The right of action to recover duties is purely statutory. A stipulation made between the importer and the deputy collector, after due protest and appeal in the case of one entry, that the duties and charges in succeeding entries should be controlled by the decision of the Secretary therein, is not a substantial compliance with the requirements of the statute, and the importer can not maintain suit after a decision in his favor by the Secretary and the refusal of the Secretary to abide by the stipulation.—*Haynes v. Brewster* (D. C.), 46 Fed. Rep., 471.

Courts—Review of General Appraisers' Decisions.—*Held*, that on review of a decision of the Board of General Appraisers, a finding of fact by the board should not be reversed where the evidence was such that, if the finding had been made by a jury instead of the board, the verdict would not have been set aside as not warranted by the evidence.—*Ralli v. U. S.* (C. C.), T. D. 26821; (G. A. 849) T. D. 11858 affirmed.

Currency.—Goods were invoiced and entered in florins at their specie value. The appraisers valued the goods according to nominal value of the florin in paper currency. A protest against the additional valuation found on such appraisement and a claim to enter the goods according to the invoice and actual cost is a sufficient protest without a specification as to how the appraisement was made to exceed true value.—*Lowenstein v. Maxwell*, 2 Blatchf., 401; 15 Fed. Cas., 784.

Deposit to Cover Duties.—Money deposited with the collector as security (additional to that of the importer's bonds) for the payment of duties and actually applied to the payment of duties can not be recovered back in the absence of a protest, even if the duties were wrongfully assessed.—*Burroughs v. Erhardt* (C. C. A.), 88 Fed. Rep., 256.

Depreciated Currency.—Where a protest claimed a discount on the value of paper currency stated in the invoice, "as per consul's certificate," and the invoice stated the fair market value of the goods at its date at the foreign port in paper currency, and also the correct rate of discount for specie value, held that the statement in the protest amounted to an averment that the proper consul's certificate was presented to the collector with the invoice, or at least that the importer had one or was able and offered to procure it.—*Craig v. Maxwell*, 2 Blatchf., 545; 6 Fed. Cas., 728.

Discriminating Duties.—Goods imported from Amposia in a Spanish vessel. Discriminating duties imposed under act of August 30, 1842, section 11. The protest asserted that the discriminating duty was illegally imposed because the act of July 30, 1846, establishes rates repugnant to those established by the act of 1842. By section 3, act of 1846, all discriminating duties in respect to Spanish vessels, except those coming from Cuba or Porto Rico, are repealed. The protest is insufficient because it did not state that this vessel did not come from Cuba or Porto Rico and did come from Spain.—*Stalker v. Maxwell*, 3 Blatchf., 138; 22 Fed. Cas., 1041.

Evidence to Prove Filing of Protest.—It is an indispensable item of proof to be made by the plaintiff that such a protest as the statute requires was made. Such proof may be made by producing the protest and showing when it was made, or by proving its contents and when it was made if it be lost, or by the admission and consent of the defendant in proper form in open court or otherwise that such a protest was made.—*Greenleaf v. Schell*, 6, Blatchf., 225; 10 Fed. Cas., 1173.

Letters from the Secretary of the Treasury to a collector of customs affirming an assessment of duty, and to an importer acknowledging the receipt of his

appeal from the collector's assessment, are admissible in evidence to show that the appeal was taken.—*Robertson v. Downing*, 127 U. S., 607, 613.

In the absence of evidence of the entry of a protest in writing, a verdict for plaintiff in an action to recover excess of duties will be set aside.—*Bodart v. Schell*, 33 Fed. Rep., 825.

Failure to Appeal From Collector's Decision.—A failure to appeal from a decision of the collector as to the rate or amount of duty does not bar a recovery of the excess of duty, as the act of 1857, providing that the collector's decision shall be final and conclusive "as to the liability of the importation to duty or exemption," "unless an appeal is taken," etc., refers to the liability of the importation to and not to the rate or amount of duty.—*Benkard v. Schell*, 5 Int. Rev. Rec. (1867), 3; 3 Fed. Cas., 192.

R. S. 2931 makes the decision of the collector respecting "the rate and amount of duties" final and conclusive unless the owner shall, within 10 days after the ascertainment and liquidation, appeal therefrom to the Secretary.

The entire question of rate and amount and as to whether it was legally assessed and found must be submitted to and passed upon by the Secretary in the first instance.

The appeal can not be neglected and the courts applied to for relief, and in its absence the decision of the collector is final.—*U. S. v. Sowers* (36 Leg. Int., 488; 14 Phila., 525; 25 Int. Rev. Rec., 405), 27 Fed. Cas., 1276.

A protest or notice of dissatisfaction to the collector is of no avail unless followed by a valid appeal. Consequently proof of protest without an appeal after liquidation was inadmissible.

The appeal to the Secretary, to be available for the purpose of a review of the decision of the collector, must be taken after such an "ascertainment and liquidation" of the duties as would be final and conclusive if no appeal should be taken. The Secretary can not be called upon until after the final disposition of the matter by the collector. He is not required to act upon the rulings of that officer from time to time, as they are made, while "ascertaining and liquidating," but only after the work of the collector has been fully completed.—*Watt v. U. S.*, 15 Blatchf., 29; 29 Fed. Cas., 441.

A vessel from a foreign port with dutiable goods on board arrived at New York and was there sold, under a decree on a libel in admiralty, to the plaintiff. The duties on the goods not being paid or secured, the inspector in charge, under the order of the collector, took the goods to the public stores, under section 56, act of March 2, 1799, and the act of March 2, 1861. The collector exacted from the plaintiff the fees, charges, and expenses connected with the removal of the goods as a condition to granting a clearance for the vessel for an outward voyage. The plaintiff paid the amount under protest, but did not appeal to the Secretary, and then brought suit to recover the amount paid. *Held*, that although the exaction was not warranted by law the suit could not be maintained because of the failure to appeal to the Secretary.—*Shaw v. Grinnell*, 9 Blatchf., 471; 21 Fed. Cas., 1190.

Filing of Notice of Dissatisfaction.—The notice of dissatisfaction with the decision of the collector as to the rate and amount of duties on imported goods may be given at any time after the entry of the goods and the collector's original estimate of the amount of duties and before the final ascertainment and liquidation of the duties as stamped upon the entry.—*Davies v. Miller*, 130 U. S., 284.

Immediate Transportation Entry.—Under R. S. 2931 and 3011, as amended by the act of February 27, 1877, if, at the first port of entry, not being one of the ports at which the statutes authorizes goods to be imported

and shipped through without appraisement, goods imported by sea are entered for warehousing and immediate transportation by the same vessel to another port and are transported accordingly, and the duties thereon are assessed by the collector at the first port and again by the collector at the second port and paid by the importers to the second collector to obtain possession of the goods, no part of the duties can be recovered, unless due protest is made within 10 days after the decision of the first collector as to the rate and amount of duties.—*Saltonstall v. Russell*, 152 U. S., 628.

Importer Confined to Claims in Protest.—Where an importer claims in his protest that his goods are dutiable as nonenumerated manufactured articles under R. S. 2513, but also makes statements and allegations of fact which are calculated to mislead the collector and relying upon which the collector finds the articles to be enumerated by virtue of R. S. 2499, for articles composed of two or more materials, he can not recover by proving facts which, while they tend to show that the articles are nonenumerated, are inconsistent with and in contradiction of the allegations of the protest.

Where an importer has alleged in his protest that his articles are "composed of crude feathers or downs (feathers the component material of chief value)" and dutiable at 25 per cent under R. S. 2499, and Schedule N, act of 1883, as a manufacture of which crude feathers or downs are the component materials of chief value, and has also claimed them to be dutiable at 20 per cent as nonenumerated manufactured articles under R. S. 2513, and it appears upon the trial that down is the component material of chief value, the importer can not recover upon the ground that down, the component material of chief value, is on the free list, and his articles are therefore nonenumerated, as that claim is inconsistent with the allegations of his protest.

A protest is sufficiently distinct and specific, notwithstanding it contains a number of different and inconsistent claims.

An importer can not recover on any ground not distinctly and fully set forth in his protest.—*Legg v. Hedden*, 37 Fed. Rep., 861.

Action to recover duties paid on merchandise entered as sago flour taxed as starch against a protest that the article was sago flour and free. *Held*, that the plaintiff must recover, if at all, upon the ground stated in his protest, and therefore he could not recover although upon the trial it appeared that the article was not flour and not dutiable.—*Chung Yune v. Kelly*, 14 Fed. Rep., 639.

In an action to recover duties the importer can not avail himself of any objections to the actions of the customs officers except those specified in the protest.—*Wilson v. Lawrence*, 2 Blatchf., 514; 30 Fed. Cas., 138.

In an action to recover duties no ground of objection to the payment of the duties can be taken which was not specifically and distinctly stated in a protest made at the time of the payment of the duties.

Where the protest merely protested against the payment of the additional duties, but stated no ground of objection, held that in an action to recover the plaintiff could not question the validity or accuracy of the appraisement on which the duties were paid.—*Durand v. Lawrence*, 2 Blatchf., 396; 8 Fed. Cas., 113.

No substantive ground of objection not contained in the protest can be taken at the trial.

A protest having stated only that the invoice value was correct, the plaintiff was not allowed to show that the appraisement was not made in conformity to law.

The fact that the deputy collector dictated the form of the protest does not estop the collector from denying its efficiency for a purpose which does not

appear to have been brought to the notice of the deputy.—*Kreisler v. Morton*, 1 Curt., 413; 14 Fed. Cas., 863.

Importer Must Prove Claim.—The collector is presumed to have assessed the duty according to law, and the burden is on the plaintiff to show by preponderance of evidence that the collector was wrong.—*Luckemeyer v. Magone* (C. C.), 38 Fed. Rep., 30.

Irregular Appraisement.—The act of June 30, 1864 (13 Stat., 202), section 14, applies not only where the collector errs in judgment as to the proper rate and amount of duties, but also where there are informalities on the part of the customs officers respecting the appraisal of the merchandise, such as would enable the importer to recover his money back if he had duly protested, appealed, and brought suit.—*U. S. v. Chase*, 25 Int. Rev. Rec., 161; 25 Fed. Cas., 410.

Nonimportation—Voluntary Payment.—Where a bond was given on a warehouse entry, and it turned out that some of the goods covered by the bond were not imported, and a remission of the duties on those goods was refused by the Treasury Department because the application was not made within a year after the importation, and the importer then paid, under protest, the duties on the missing goods to avoid a suit on the bond, held that he could not recover.

The payment was voluntary and was not made in order to obtain possession of the goods.—*Marshall v. Redfield* (4 Blatchf., 221; 40 Hunt Mer. Mag., 195; 2 Weekly Law Gaz., 296), 16 Fed. Cas., 848.

Objections to Appraisers Not Clearly Specified in Protest.—The plaintiff is not authorized to except to the competency of the reappraisers either for the reason that the general appraiser was one of them or that the merchant appraiser was sworn by a customhouse appraiser, because by his protest he did not set forth distinctly and specifically the particulars constituting their disqualification.—*Goddard v. Maxwell*, 3 Blatchf., 131; 10 Fed. Cas., 510.

General allegations in a protest that the appraisers were prejudiced or incompetent need not be regarded by the collector when the particulars constituting the disqualifications charged are not set forth specifically.—*Bangs et al. v. Maxwell*, 3 Blatchf., 135; 2 Fed. Cas., 595.

Where on an appraisal both by official appraisers and merchant appraisers the invoice value of goods was raised and duties on the increase were paid under protest, which objected "that the appraisals and reappraisals were not fairly, impartially, or legally made, nor by persons unprejudiced and duly qualified to make them," held that no action to recover could be maintained either on account of irregularity in selecting or qualifying the appraisers or otherwise, because the protest did not set forth distinctly the grounds of objection to the regularity and legality of the appraisements made or wherein the appraisers were prejudiced or not duly qualified.—*Christ v. Maxwell*, 3 Blatchf., 129; 5 Fed. Cas., 652.

In a suit to recover duties levied on a reappraisement of goods under the act of May 30, 1830, section 2, and paid under protest—one ground of the suit being that the reappraisement was not made by the person authorized by the act to make it—it is necessary that the objection be specified in the protest; otherwise it will not be heard here.—*Iasagi et al. v. The Collector*, 1 Wall., 375.

Payment of Duties Before Protest.—Where duties are paid before protest is made the duties can not be recovered.

And where money is deposited with a collector wherewith to pay the duties when they shall be ascertained, and the duties are afterwards ascertained, and then a protest is made against the payment, the protest is too late, the

money not having been paid compulsorily in order to get possession of the goods.—*Crocker v. Bedford*, 4 Blatch., 378; 18 How. Pr., 85; 6 Fed. Cas., 835.

Period of Valuation.—Where goods were invoiced and entered at their market value at the time of their purchase, and their value had increased between that time and the time of their exportation, and under instructions from the Treasury Department they were appraised at their value at the time of their exportation, and duties were assessed on that valuation and also an additional duty of 50 per cent under section 17, act of August 30, 1842, and were paid under a protest "against the demand of the duties charged upon the merchandise specified in the within entry," which said "the difference between the sum so charged and what ought to have been levied upon the prices mentioned in the invoice we shall claim to recover back, and we also protest against the penalty of 50 per cent in addition to the duties charged, because the invoice was fair and the said last-mentioned sum is levied without the process of law," held that under such protest it could not be objected that the collector did not under section 17, act of August 30, 1842, order a reappraisement or that one of the examiners was partial and hostile to the importer.

The 50 per cent penalty under the act of August 30, 1842, is an increase of duties, and a protest is necessary to recover it.

As the Treasury instructions were given to the appraisers by the collector to govern them in making the valuation as of the time of exportation, this fact, in connection with the protest, made the protest sufficient to raise the objection that the goods were erroneously valued as of the time of their exportation instead of as of the time of their purchase.—*Maillard v. Lawrence*, 3 Blatch., 378; 16 Fed. Cas., 501.

Proof that Protest and Appeal were Made.—Under the practice in New York, allegations in the complaint that the plaintiff "duly" protested in writing against the exaction of duty and duly appealed to the Secretary of the Treasury, and that 90 days had not elapsed at the commencement of the suit since the decision of the Secretary, if not denied by the answer are to be taken as true and are sufficient to prevent the defendant from taking the ground at the trial that the protest was premature or that the plaintiff must give proof of an appeal, or of a decision thereon, or of its date.—*Robertson v. Perkins*, 129 U. S., 233.

Prospective Protest on Future Importations.—Expenses of transportation from Paris to Havre and from Havre to London, en route to New York, and also commissions, were added to the dutiable charges. The protest closed as follows: "You are hereby notified that we desire and intend this protest to apply to all future similar importations made by us." This did not dispense with the necessity of a protest with reference to such subsequent importations.—*Warren v. Peaslee*, 2 Curt., 231; 29 Fed. Cas., 280.

A clause in these words, "and hereby protest on all future entries of the same goods," added at the end of a protest can not have any effect as a prospective protest to aid an insufficient specific protest subsequently made.

Whether such a sweeping prospective protest ought to be held good in respect to entries at such a port as New York under the act of February 26, 1845, query.

Where the articles in the entry in which such prospective protest was made were described therein as "linens," "hemp covering," and "jute rove," Held that such prospective protest could not apply to a subsequent entry, without protest, of the same articles as "linens," or as "hemp carpet coverings," or as "hemp carpeting," but that it was sufficient to cover a subsequent entry, without protest, of the same articles as "jute rove," the two importations being

within three weeks of each other and no protest having been made on any intermediate importation of the article.

Where, after such prospective protest was made, five successive importations of the same article were made and entered with specific protests, some of which were sufficient and some insufficient, and afterwards importations on it were made without protests, *Held* that such prospective protests could not extend to such last importations.

A specific protest which does not refer to or affirm a prior prospective protest must be regarded as evidence of the abandonment of all grounds of objections.

Where 30 per cent duties were charged on an article under Schedule C, of the act of 1846, as being "carpeting," and on the payment of the duties a protest was made claiming that the article was nonenumerated and subject to a duty of 20 per cent, and on a trial of a suit to recover the excess the jury found that the article was a "manufacture of hemp" on which, under Schedule E, the duty was 20 per cent, *Held* that as the jury found that the article was an enumerated one the protest was insufficient.—*Baxter et al. v. Maxwell*, 4 Blatch., 32; 2 Fed. Cas., 1054.

Where an importer protested in proper form against the exaction of 25 per cent duty on a particular importation of thread laces, claiming that it was liable only to 20 per cent duty under a specified schedule of the tariff act then in force, and added in the same protest: "I mean this protest to apply to all like exactions heretofore paid and to all future, and shall claim a return thereof." *Held*, that that was a sufficient protest under this act against the exaction when made on any future importation by the same party without the repetition *Steegman v. Maxwell*, 3 Blatch., 365; 22 Fed. Cas., 1198.

A protest against the payment of 25 per cent duty charged on thread laces, claiming that the laces are liable to a duty of only 20 per cent, is sufficient.—*Steegman v. Maxwell*, 3 Blatch., 365; 22 Fed. Cas., 1198.

The importer on paying duties January 10, 1871, added to a protest then filed by him with the collector in respect to the exaction of duties thereon these words: "I intend this protest to apply to all future similar importations by me." On January 21, 1871, the importer entered for warehousing like goods, and on June 20, 1871, the collector exacted duties thereon on a withdrawal entry at the same rate as protested against. In a suit to recover back the alleged excess of duties, *Held* that a prospective protest or continuing protest is not valid under the laws now existing.—*Ullman v. Murphy*, 11 Blatch., 354; 18 Int. Rev. Rec., 156; 24 Fed. Cas., 506.

A valid prospective protest against the payment of duties made on a particular importation of merchandise and expressing the intention of the importer that the protest shall apply to all future importations made by him is valid as to subsequent importations of similar merchandise on which the duties are exacted, as respects not only future exactions of like duties from the protesting party by the same collector, but as respects future exactions of like duties from him by a succeeding collector.—*Wetter v. Schell*, 11 Blatch., 193; 29 Fed. Cas., 845.

Prospective Protest—Time of Making Protest.—A protest in the following terms: "Having been informed that it is the intention of the Secretary of the Treasury not to make allowance on the payment of duties on such articles as may reach here less in quantity from loss in weight or leakage than at the time of shipment (for instance, sugar, molasses, etc.), and on which a duty ad valorem of the invoice is exacted, we hereby protest against the payment of such entire amount of duty, being of opinion that the law at present in force authorizes an allowance for actual loss in weight or gauge, as shown by the difference in the invoice and the returns of the weighers or gaugers on such

cargoes, after delivery in this port. We desire that this present protest should extend to all our importations of sugar and molasses since the operation of the present tariff, viz," etc. *Held* not to apply to duties previously paid, but to apply to all duties exacted after the protest, and that a particular protest in each case was not required by law.

The protest is not required to be made before the payment of what are called the estimated duties, for this payment is necessarily estimated by the invoice quantity as well as the invoice price.

The protest is legally made when the duties are finally determined and the amount assessed by the collector, and a protest before or at that time is sufficient.

The payment of money upon estimated duties is rather in the nature of a pledge or deposit than a payment, for it remains in the hands of the proper officer, subject to the final assessment of the duties, and if more has been paid than is due, the surplus belongs to the importer and is returned to him.—*Brune v. Marriott*, Taney, 192; 4 Fed. Cas., 475.

Prospective Protest.—The act of 1857 does not require a protest to be attached to each particular entry, but allows them to be prospective and continuous.—*Benkard v. Schell*, 5 Int. Rev. Rec. (1867), 3; 3 Fed. Cas., 192.

Protest.—Revised Statutes 3011 provides that it is necessary for the plaintiff to have protested at or before the time of the payment of the duties. With regard to one entry there was only the naval office copy, and as to the other entry there was a copy of the collector's entry with a mark at the upper left hand corner, which looked as if at one time there might have been something attached. *Held*, that there was nothing to leave to the jury to prove that such a protest as the law requires was served.

The evidence showed that the protest was signed by the firm name, but there was nothing to prove the handwriting or the authority of the person who wrote the signature. Verdict directed for the defendant.

The acceptance of the protest by the collector was no waiver, as he was under no obligation to inquire into the authority of the person protesting before he received the protest.

Regulations of the Secretary, article 625, requires the officer who has charge of the inspection and deliveries from vessels to make returns in writing of each delivery within three days, and article 517 requires the assistant store-keeper, or whoever was in charge of the warehouse, to keep accurate account of all goods received, delivered, and transferred. *Held*, that the records kept under those regulations were competent evidence without the testimony of the individuals who made the entries.—*Grandmange v. Schell*, 32 Fed. Rep., 655.

A valid prospective protest made on a particular importation and expressing the intention of the importer that the protest shall apply to all future similar importations made by him is valid as to subsequent importations of similar merchandise on which like duties are exacted by the same collector.

Such prospective protest is not invalidated as to any such future similar importations by the same importer's intervening specific protests, are the same in form with the body of such prospective protest, and differ from it only in the omission of the prospective clause therein.

A protest consisting of two originally distinct pieces of paper—one a white paper containing an unsigned printed form of one of such specific protests and the other a blue paper pasted to the white paper and containing a signed printed form of a prospective protest against the exactions of duties on certain commissions—is a valid protest under the rule applied by the courts to the construction of protests against the exaction of duties. The prospective clause of the com-

mission's protest covers everything in such composite protest from the beginning to the end so far as its form is concerned, and such composite protest is as far-reaching as any prospective protest.

When the evidence as to the usual course of business is sufficient to furnish a strong presumptive case in favor of the service upon the collector or other person authorized to receive the same, of a protest, the proof from the records of protests kept at the customhouse that the protest was recorded when received and that it stands of record as of a certain date is abundant to establish the fact that it was served upon the collector or other authorized person in time.

Where no provision for the service of a protest is made by statutes, by Treasury regulations, or by the collector, but a particular mode of service has been in force and recognized for a considerable time, service in that mode is good service until some change has been announced.

Where an importer, before delivery to him of the goods, paid in cash as prescribed by section 12, act of 1842, the full amount of duties required by law and delivered to the collector a 10-day bond as prescribed by section 4, act of May 28, 1830, or where, having in accordance with the same acts paid to the collector the estimated amount of the duties and delivered such bond, he received a portion of his importation, and subsequently and before he received the other portion paid a sufficiently additional amount of duties assessable on the entire importation, such payment or payments was to obtain possession of the goods.

A protest made in the case of merchandise not enumerated *eo nomine* in the act in force at the time of the importation and stating only that the same is dutiable at a rate of duty which is imposed upon upward of 50 articles especially enumerated therein is insufficient.—*Fauche v. Schell*, 33 Fed. Rep., 336.

Notice was posted in a customhouse that it would be closed June 17, a holiday observed by local custom but not established by law. Certain importers, having notice of the closing of the customhouse on that day, which was the tenth after liquidation of their entry, filed a protest on the day following. *Held*, that the protest was filed in accordance with the requirements of section 2931, Revised Statutes, providing that protests shall be made "within 10 days after the ascertainment and liquidation of the duties."—*Frost v. Saltonstall* (C. C.), T. D. 25040.

It is a condition precedent to a right of action against a collector for the return of duties paid under protest that the claimant shall in his protest point out to the collector by positive and direct notice every particular of fact and law which he relies upon as protecting his goods from the duties demanded.

Where a protest is written on an entry, they compose, in effect, one paper, and it is unnecessary to repeat in the protest the description given of the goods in the entry.

Where a protest was in these words, "We protest against paying additional duty and penalty on" [describing the goods], "they being appraised too high. We claim to have refunded" [naming the amount], "being amount paid for additional duty and penalty," *Held* that the person making such protest could not in an action to recover the amount so paid raise any objection to the regularity of the appraisal proceedings.

Where the time of exportation is taken by the appraisers as the time of valuation, and the importer claims that the time of manufacture or production should be taken, he must make that a ground of protest.—*Thomson v. Maxwell*, 2 Blatch., 385; 23 Fed. Cas., 1100.

After the act of 1839 (5 Stat., 348) no action could be maintained against a collector for the exaction of excessive duties, after the money had been paid into the Treasury, until the act of 1845.

Under this act the right of action was made to depend upon a protest which gave the officer notice, which protest must be made at or before the payment on the duties.

The importer must at least indicate in his protest distinctly and definitely the ground of his complaint, and his design to make it the foundation of a claim against the Government.

Such a protest was designed to inform the officers that the claim would be asserted against them for the excessive duty and of the reasons for which it was supposed to be an improper levy, and if it did not do this it was insufficient.

Therefore, where a protest was made against duties on hemp and iron, both in one entry, because "there exists no law authorizing the exaction of such duty," when in fact it was only the amount of duty on the hemp which was in controversy, the protest is insufficient and the action can not be sustained.—*Curtis v. Fielder*, 2 Black, 461, 480.

Protest and Appeal.—Construing together R. S. 2931 and 3011, the decision of the Secretary, on an appeal from a collector, as to the rate and amount of duties is not final and conclusive, except in a case where, after protest and appeal, a payment of duties is made in order to obtain possession of the goods and then a suit is not brought to recover the duties within the time and under the limitations prescribed by R. S. 2931.

In a suit brought by the United States against an importer who, on entering the goods, paid the estimated duties and to whom the goods were delivered, and on a reliquidation of the entry further duties were assessed, and who duly protested and appealed to the Secretary, by whom the action of the collector was sustained, the decision of the collector is not final.

The defendant may show that the duties were illegally assessed.—*U. S. v. Schlesinger*, 120 U. S., 109.

In an action to recover duties illegally exacted, protest and appeal are necessary as a condition precedent to recovery, even when the United States are plaintiffs in an action to recover duties in excess of those already paid.

When the United States sue to recover duties upon importations of bar steel, which was entered and duties paid as upon "scrap steel," and the goods were delivered before the final liquidation, the importer may set up facts which make the assessment illegal and is not bound to suffer judgment to be entered and proceed by suit to recover the amount paid at any time within 90 days thereafter.—*U. S. v. Schlesinger*, 14 Fed. Rep., 682.

When the collector has acquired jurisdiction of the assessment of duties through the importation of goods that are liable for duty, any irregularity in the appraisement and liquidation must first be reviewed by protest and appeal, pursuant to R. S. 2931, or they can not be raised in a collateral suit.—*U. S. v. Earnshaw*, 12 Fed. Rep., 283.

Protest Before Liquidation.—When a sum of money has been paid for duties as estimated at the time of the entry, and subsequently the duties are liquidated at higher rates in case of some importations and lower in case of others, but at a less sum than the sum already paid, a protest made after such payment and before the liquidation is made before payment within the terms of this section.—*Strange v. Barney*, 35 Fed. Rep., 196.

A protest made before duties are finally adjusted and closed is in season, although moneys had been previously advanced on account of duties.—*Marriott v. Brune*, 9 How., 619, 636.

Protest by Agent.—An entry or protest made by an agent is in law made by his principal. A protest signed, not by the claimant personally, but by his agent, is sufficient.—*Gray v. Lawrence*, 3 Blatch., 117; 10 Fed. Cas., 1031.

Protest Confined to Articles Specified Therein.—The protest was against paying duty on "rosewood furniture." Rosewood furniture is a well-known and specific term, and the protest can not be extended beyond what is specifically embraced in it. Furniture of other woods, silk and worsted goods, and furniture of rosewood and common wood together, or rosewood and mahogany together, must be excluded.—*Pousot v. Lawrence* (N. Y. Times, Apr. 29, 1857), 19 Fed. Cas., 1209.

A protest "against paying 40 per cent duty on rosewood furniture, believing it should pay 30 per cent as cabinet furniture," can not be extended to embrace other articles, or furniture of other woods, or furniture of rosewood and other woods combined, where such other woods form so large and so conspicuous a part of the furniture as to require it to be classed, in commercial transactions, by some other name than merely "rosewood."—*Ponsot v. Maxwell*, 4 Blatch, 43; 19 Fed. Cas., 986.

Reasons for Protest Must be Specifically Stated.—A protest that the appraisers had not used or employed sufficient means or made sufficient examination of the articles to determine their value, may be sufficient under *Converse v. Burgess* (18 How., 413) as a foundation for proof that the appraisers did not examine samples from the statute number of packages and did not at all examine either packages or samples, but it offers little information to the collector as to the real ground of objection.—*Boker v. Bronson*, 4 Blatch., 472; 44 Hunt, Mer. Mag., 74; 3 Fed. Cas., 807.

A protest against the payment of duties must set forth the specific objections of the party and refer the collector distinctly to the facts; otherwise the party can not avail himself of them in an action to recover.

Where a protest stated "that under existing laws said amount is unjustly added and is not liable to duty, because the said invoice and the said entry exhibited the true market value of said iron at Liverpool, from whence said iron was imported," held that the only point raised by the protest was the correspondence of the invoice value with the value at the place of export at the date of the invoice and that the importer could not, under the protest, show that the invoice value was the actual purchase price.—*Cornett v. Lawrence*, 2 Blatch., 512; 6 Fed. Cas., 575.

The law requires that the importer shall specifically and distinctly state in his protest the ground of objection to payment, and a recovery can only be had on the ground stated.

The purpose of the act of 1842 that when an appraisement is made upon an increased valuation and not on that in the invoice, the appraiser shall view the property, and if he does not do so, and the importer pays the duty under protest, he can recover it, is intended for the benefit of the importer and is waived by failure to protest.—*Boker v. Bedford*, 40 Hunt Mer. Mag., 705; 3 Fed. Cas., 808.

Recovery of Duties Overpaid.—A protest in order to be available for the recovery of duties must be made at or before their actual payment, and when the importer deposits with the collector an amount supposed to be sufficient to pay the duties, subject to future liquidation, and receives the goods, and on such liquidation an amount is found to be due the importer as overpayment and is refunded to him, a protest made after the deposit and receipt of the goods, but before liquidation, is too late and is of no avail.—*Barney v. Rickard*, 157 U. S., 352.

Requirements of Protest.—To entitle the plaintiff to recover for excess of duties paid, he must establish three facts: (1) That the duties were not authorized by law; (2) that he, at or before payment of the duties, made a protest in

writing setting forth distinctly and specifically the grounds of objection to the payment of the duties; (3) that the payment was made in order to enable him to obtain possession of the goods.

Where an excess of duties is paid under protest after possession has been obtained by the importer of the goods on which the excess is paid such excess can not be recovered.—*Drake v. Redfield*, 4 Blatch., 116; 7 Fed. Cas., 1052.

When an action is brought under R. S. 3011 as amended by the act of February 27, 1877 (19 Stat., 247), to recover back an excess of duties paid under protest, the plaintiff must under R. S. 2931, as a condition precedent to his recovery, show not only due protest and appeal to the Secretary, but also that the action was brought within the time required by statute.

It is not necessary, under R. S. 2931, that the decision of the Secretary on the appeal should, in order to be operative, be communicated to the party appealing. *Arnson v. Murphy*, 115 U. S., 579.

In a suit to recover an alleged excess of duties it is incumbent on the plaintiff to show: First, that he protested; second, that he appealed; third, that he brought his suit within the time required.

It is not incumbent on the Secretary to communicate to the appellant his decision on an appeal from the decision of the collector.—*Arnson v. Murphy*, 24 Fed. Rep., 355.

Sufficiency of Protest.—A protest made in the case of this merchandise, stating the rate of duty only that it is claimed should be imposed thereon, but especially referring for the grounds of the claim to a Treasury circular (circular of Mar. 1, 1858), in which it was held by the Secretary that other merchandise therein mentioned was dutiable at that rate as being manufactured of certain material enumerated in the tariff act as such manufacture, is to be taken together with such circular as constituting the claimant's entire protest, and is, with such circular, sufficient under the act of February 26, 1845, if they prove that the merchandise covered by the protest is such manufacture.

But if this merchandise is shown to be a manufacture of a material bearing another name than the material of which the manufacture named in the protest is composed, and the tariff act makes a clear and positive distinction between these materials by imposing thereon *eo nomine*, different rates of duty, the court, in considering the tariff act, will make the same distinction, although the name of the second material is the name of the genus, and the name of the first is the name of the species thereof, and the claimants are not entitled to recover.—*Smith v. Schell*, 27 Fed. Rep., 648.

The protest is a mercantile and not a legal instrument, and when its meaning is unmistakably plain its phraseology will not be scrupulously criticized by the courts.

The invoice and entry may ordinarily be regarded as connected with and forming part of the protest, being the things out of which the protest arises and to which it relates.

A clause in the protest "that the merchant appraiser was not legally sworn in," when considered in connection with the oath annexed to the appraisal, which was before the collector and showed that the merchant appraiser was sworn by an official appraiser, was a sufficient protest to raise the question as to the legality of such oath.

A protest "that no penal duty of 20 per cent under section 8 of the act of 1846 can be exacted except where the importer has added to his invoice price or entry" is a sufficient protest to raise the question whether the collector is authorized to impose the penalty appointed by section 8 of the act of July 30, 1846 (9 Stat., 43), where no addition has been made by the importer to the value of his entry.

Where an invoice of lemons, though dated at Genoa, the place of departure of the vessel, stated the value of the lemons free on board at San Remo, which was a port 70 miles from Genoa and on the track of the vessel to New York and the chief market of the country for lemons, and added 2 per cent commissions, and the lemons were taken on board at San Remo and bills of lading were there signed, and the lemons were entered at New York as embarked from San Remo, and the invoice showed the true price of the lemons at Genoa and San Remo, and the public appraisers and also appraisers on appeal raised the invoice value by adding the freight on the lemons from San Remo to Genoa, and also by increasing the charge for commissions, and, these additions increasing the invoice value by more than 10 per cent, an additional duty or penalty of 20 per cent was imposed under section 8, act of July 30, 1846, which was paid under protest "that the expenses of transportation from the place of original shipment to Genoa are not dutiable charges, that the reappraisal is illegal because the price is made to include charges, and that no penalty can be exacted for addition of charges." *Held*, that the protest was, in connection with the invoice, a sufficient protest under this section to notify the collector that the valuation by the appraisers of the charges of transportation between Genoa and San Remo was complained of.—*Vaccari v. Maxwell*, 3 Blatch., 368; 28 Fed. Cas., 862.

Duty assessed on bichromate of soda at 3 cents a pound. The protest stated that the importation should pay "a duty of 25 per cent, not 3 cents per pound." It did not specify under what schedule, section, clause, or paragraph of the tariff act, or under what name in said act the same is claimed to be dutiable. *Held*, that where there is more than one clause or paragraph in an act imposing the same rate of duty, and where the imported merchandise is not specifically designated in the act by the same name as that stated in the protest, such a protest is invalid and insufficient.—*Cummins v. Robertson*, 27 Fed. Rep., 654.

Where a protest against the imposition of duties after appraisal protested "against the payment of 15 per cent advance and the penalty therefor accruing on velvets contained in the entries, because we are fully satisfied that they are fully indorsed by the manufacturers," held that if the importers had the right to contest the price fixed by the appraisers the protest does not point out the particulars in which there was an overvaluation and is insufficient.—*Hertz v. Maxwell*, 3 Blatch., 137; 12 Fed. Cas., 59.

The merchant paid duties upon commissions under protest, and the protest set forth that the merchant "paid no such commissions." *Held*, that the protest was insufficient and that, consequently, the action could not be maintained.—*Norcross v. Greely* (1 Curt., 114; 15 Law Rep., 149; 29 Hunt Mer. Mag., 203), 18 Fed. Cas., 301.

Gloves made of cotton and silk, of which cotton was the material of chief value, imported in January, 1874, were assessed at 60 per cent, that rate being chargeable only on silk gloves, under the act of June 30, 1864, and on ready-made clothing, etc., under the act of March 3, 1865. The importer protested and appealed and brought suit. His protest stated that the goods were only liable to a duty of 35 per cent, less 10 per cent, "being composed of cotton and silk (cotton chief part), the duty of 60 per cent being only legal where silk is the chief part." The goods were made on frames. *Held*, (1) that the protest set forth distinctly and specifically the grounds of the objection of the importer to the decision of the collector and was sufficient; (2) it was immaterial that the protest did not specify that the gloves were made on frames.—*Heinze v. Arthur's Executors*, 144 U. S., 28.

A protest against paying duties on 2½ per cent commission because no commission was paid is insufficient, it being immaterial whether any commission was paid or not.

A protest against paying duties on costs and charges because the goods were invoiced "free on board" is insufficient, unless the words "free on board" are found in the invoice.

A valid prospective protest made on a particular importation of merchandise and expressing the intention that the protest shall apply to all future similar importations made by the importer is valid as to subsequent importations of similar merchandise on which like duties are exacted.—*Hutton v. Schell*, 6 Blatchf., 48; 7 Int. Rev. Rec., 84; 12 Fed. Cas., 1095.

A protest must point out specifically the particular omissions or irregularity complained of, or it will not be available. In this case the importer subjoined to each entry a written protest. On one "claiming to enter the iron at actual and invoice cost," on the other "claiming to enter it according to the sworn invoice."—*Focke v. Lawrence*, 2 Blatchf., 508; 9 Fed. Cas., 329.

A protest "against any greater rate of duty being charged upon hay shipped to or by us from Canada to the United States, entered with you or at the customhouse at Rouses Point, than at the rate of 10 per centum ad valorem, for the reason and on the ground that no higher rate than 10 per centum can lawfully or properly be charged on hay imported under the laws of the United States concerning duties on imports," is sufficient.—*Frazer v. Moffitt*, 18 Fed. Rep., 584.

Merchandise imported as silk ties. Duty assessed at 60 per cent under the act of 1864, section 8, as silk scarfs. The importer protested on the ground that the merchandise was "articles worn by men, women, and children, and wearing apparel, and should only pay duty at 35 per cent ad valorem, under section 22, act of March 2, 1861, and section 13, act of July 14, 1862, and are neither scarfs nor ready-made clothing in fact or as shown in trade or commerce." The merchandise was in fact dutiable at 50 per cent as a manufacture of silk, not otherwise provided for, under the last clause of section 8. *Held*, that the protest was insufficient because it did not set forth distinctly and specifically the ground of objection to the amount claimed and failed to state the true ground of objection to the duty exacted.—*Davies v. Arthur* (13 Blatchf., 34; 21 Int. Rev. Rec., 205; 7 Fed. Cas., 43); affirmed, 96 U. S., 148.

A protest must be signed by the importer and must set forth distinctly and specifically the grounds, and the importer is confined to those grounds. In this case the protest was signed Brown & Winchester, and it was not alleged or proved that they are the Robert D. Brown and James Winchester who are claimants. *Held* insufficient.—*Brown v. U. S.*, 1 C. Cls. R., 377.

Goods imported in 1881, being classified under the first clause of R. S. 2499, as bearing a similitude to manufactures composed wholly or in part of the hair of the alpaca, goat, or other like animals, and duty assessed at 50 cents a pound and 35 per cent ad valorem. The importer protested that the goods were composed of hair and cotton only, and as such should pay a duty of 35 per cent ad valorem as a nonenumerated article under the second half of R. S. 2499, being the highest rate which any of the component materials pay. In an action to recover, *held* that this protest was defective in that it failed to point out or suggest in any way the provision which actually controlled, and in effect only raised the question which of two clauses, under one or the other of which it was assumed that the importation came, should govern as being most applicable.—*Herrman v. Robertson*, 152 U. S., 521.

The protest is "against the payment of duties on" [the increased valuation specified], "added to the entry value of the appraisers, because the original

entry was the actual cost and full value at the time of the purchase." The protest designates no time of purchase different from that given in the invoice, and the importer can not set up a different and long antecedent period of purchase, nor can he impugn the appraisement by giving proofs of irregularity in the appraisement.—*Pierson v. Maxwell*, 2 Blatchf., 507; 19 Fed. Cas., 681.

Sufficiency of Protest—Leakage.—Where on several importations of gin the quantity which arrived was, through leakage, less than the quantity stated in the invoice, and the collector exacted duties on the quantity stated in the invoice, which were paid under the following protests, written on the face of the entries, "The actual gauge and 2 per cent claimed for leakage," "The actual gauge and 2 per cent claimed for wantage and leakage," "The actual gauge and 2 per cent for leakage claimed on this entry," held that these protests were sufficient.—*Schuchardt v. Lawrence*, 3 Blatchf., 397; 21 Fed. Cas., 747.

Sufficiency of Protest—Additional Duties.—A protest objecting in general terms to the additional duties exacted, but assigning no reasons for the objection, will not warrant the institution of a suit to recover back the duties objected to even though such duties were illegally exacted.—*Mason v. Kane*, Taney, 173; 24 Hunt Mer. Mag., 717; 16 Fed. Cas., 1044.

H. Herman, doing business in his own name as importer, gave notice by what was known as a prospective protest to the collector of customs. He afterwards took a partner, when the firm name became H. Herman & Co., and the firm continued to import the same class of goods. Held, that the notice of protest given in the name of H. Herman was sufficient to cover duties subsequently levied upon importations made by the firm.—*Herman v. Schell*, 18 Fed. Rep., 891.

When a protest is in proper form and attached to the invoice, an omission of date is immaterial.

A protest is sufficient if it indicates to an intelligent man the ground of the importer's objection.

Two papers attached together by a wafer and signed on the bottom of the lower one, which when read together make a protest against two exactions of duties, are to be treated as a unit.

The failure of a collector of customs to conform to a Treasury regulation requiring him to record protest ought not to prejudice the rights of the importer.—*Schell's Executors v. Fauche*, 138 U. S., 562.

Sufficiency of Protest—Technical Precision Not Required.—A protest is not required to be made with technical precision, but is sufficient if it show fairly that the objection afterwards made at the trial was in the mind of the party and was brought to the knowledge of the collector, so as to secure to the Government the practical advantage which this act was designed to secure.

Under a protest which alleges that "the goods were not fairly and faithfully examined" the importer may rely on the failure of the appraiser to examine one package in every ten.

If the proceedings of the Government appraisers are not in conformity with law, the importer may refuse to pay by reason of such defects, pointing them out in his protest; but if he claims an appeal to merchant appraisers, and their proceedings are regular, the defects in the proceedings of the Government appraisers are immaterial.—*Burgess v. Converse*, 2 Curt., 216; 4 Fed. Cas., 726.

A protest is not required to be made with technical precision, but is sufficient if it shows fairly that the objection afterwards made at the trial was in the mind of the party and was brought to the knowledge of the collector, so as to secure to the Government the practical advantage which the statute was designed to secure.

A protest against paying 35 per cent duty on the carriage, which states that the carriage is "personal effects" and has been used over a year (as shown by affidavit), and that under R. S. 2505 "personal effects of actual use" are free from duty, is a sufficient protest, on which the amount paid can be recovered on the ground that the carriage was free as "household effects" under the same section.—*Arthur v. Morgan*, 112 U. S., 495, 501.

Time of Filing of Protest.—This act applies to the payment of unascertained and estimated duties which are to be afterwards liquidated, and the protest may be made at the time of the final liquidation.

The fact that the collector exacts duties in violation of instructions does not supply the want of a protest.—*Moke v. Barney*, 5 Blatchf., 274; 2 Int. Rev. Rec., 157; 17 Fed. Cas., 574.

In 1888 a right of action accrued to an importer if he paid the duties in order to get possession of his merchandise and if he made his protest in the form required within 10 days after the ascertainment and liquidation of the duties.—*Saltonstall v. Birtwell*, 164 U. S., 54.

Where gross estimates of duties were made prior to liquidation, in accordance with R. S. 2869, and were paid in order to obtain possession of the goods, no protest was then required, but it was sufficient if the protest was filed within 10 days after the date of final liquidation. 63 Fed. Rep., 1004, affirmed.

The words "payment under protest," in R. S. 3011 as amended, must by reason of the reference in the latter part to section 2931, which defines a protest, be construed to include a payment in connection with a protest; that is, a payment preceded by, accompanied with, or followed by a protest, whichever is permitted by section 2931.—*Saltonstall v. Birtwell* (C. C. A.), 66 Fed. Rep., 969.

The reference to section 2931 contained in section 3011, Revised Statutes, is to the time as well as the form of the protest, and hence it need not be made before or at the time of the payment of the duties, but is good if made within 10 days.—*Birtwell v. Saltonstall* (C. C.), 63 Fed. Rep., 1004.

Timeliness of Protest—Sundays.—In computing the time within which a protest must be served upon the collector, if the 10th day falls on Sunday that day can not be excluded, and service on Monday following is not a sufficient compliance with the requirements of this section.—*Shefer v. Magone*, 47 Fed. Rep., 872.

Timeliness of Protest—Reliquidation.—The importers failed to protest against the exaction of duty on certain charges on the original liquidation of the entry. Later, on the reliquidation of the entry for the purpose only of including a damage allowance, but without affecting in any way the amount of duty on the charges, a protest was filed against the duty on the charges. *Held*, that the protest was in compliance with section 2931, Revised Statutes, requiring that protest shall be filed "within 10 days after the ascertainment and liquidation of the duties."—*Sgobel v. Robertson* (C. C.), T. D. 25048.

A protest within 10 days after the collector has liquidated the duties, and an appeal within 30 days thereafter, is valid as to time, although the liquidation is subsequently revised.—*Keyser v. Arthur*, 14 Fed. Cas., 442.

Tonnage Duties.—An allegation that a collector "exacted" certain tonnage duties is equivalent to saying that they were "ascertained and liquidated" by him, as provided by R. S. 2931, and an allegation that the grounds of the objection to the decision of the collector were specified in the notice to him "clearly and distinctly" is equivalent to saying they were "distinctly and specifically" set forth therein, as required in section 2931.—*Laidlaw v. Abraham* (C. C.), 43 Fed. Rep., 297.

Undervaluation.—Under a protest against the payment of duties and penalty which only set out "that the said invoice as originally presented by us is in all respects correct and just," and that "no legal forfeiture or penalty has been incurred," the invoice value of the goods having been increased on an appraisement, no question can be raised in an action to recover back the duties and penalty except as to the difference between the appraised and market value of the goods at the place of shipment at the date of the invoice, nor can it be shown that the invoice value was the actual purchase price.—*Tucker v. Maxwell*, 2 Blatchf., 517; 24 Fed. Cas., 275.

Where a protest by a consignee of goods claimed that they were invoiced at their fair market value, and also protested against the payment of a penalty for undervaluation, and described the goods thus, "These goods consigned to me by the manufacturer thereof, maintaining that they are not liable to a penalty under the laws for the reasons stated," *Held* that the consignee could not under the protest prove that the goods were owned and imported by the manufacturer, and so not liable to the penalty.—*Warburg v. Maxwell*, 3 Blatchf., 382; 29 Fed. Cas., 157.

Where a protest against the payment of duties and of a penalty for undervaluation, after appraisement and reappraisement, on an invoice of needles, only claimed that the invoice stated the fair value of the needles when procured abroad, and neither the protest nor the invoice nor the entry stated when the needles were procured or that they had been purchased, and the appraisements were based on the value of the needles when shipped and exceeded the invoice value, *Held* that although the needles were procured by purchase some time before they were shipped, and the price paid for them was the value stated in the invoice and was their fair market value abroad at the time of their purchase, yet under the protest the importer could not claim that the needles were procured at any other period than the date of their shipment, and the appraisements were regular.

A protest which merely claims that an appraisement was illegal, but does not state in what the illegality consisted, is insufficient.—*Crowley v. Maxwell*, 3 Blatchf., 401; 6 Fed. Cas., 915.

Validity of Protest.—The act of February 26, 1845, relating to protests was repealed by the act of June 30, 1864, which substituted for the common-law action against the collector a statutory remedy and regulated its incidents. The provisions of both acts were incorporated into the Revised Statutes, approved June 22, 1874; those of the act of 1864, as R. S. 2931, and those of the act of 1845, as R. S. 3011. *Held*, that the provisions of the act of 1845 did not affect the rights of an importer which accrued between December 1, 1873, and June 22, 1874, and that if the protest was made in the manner prescribed by the act of 1864 it was valid.—*Dieckerhoff v. Miller* (C. C. A.), 93 Fed. Rep., 651.

Verbal Protest.—No written protest against the exaction of fees for constructive permits to land goods was necessary, as the act of February 26, 1845, requires such protest only in regard to duties actually paid.—*Ogden v. Maxwell*, 3 Blatchf., 319; 18 Fed. Cas., 613.

A verbal protest against the illegal exaction of duties is sufficient. (This decision was before the act of February 26, 1845.)—*Swartwout v. Gihon*, 3 How., 110.

Voluntary Payment of Duties.—Duties wrongly imposed, if paid by the importer voluntarily and without protest or remonstrance, can not be recovered from or set-off against the United States.

Payment to a public officer, if unaccompanied by remonstrance or protest which need not be written, is a voluntary payment. (This case was decided

in 1841, which was before the act of 1845 requiring written protest.)—*U. S. v. Clement, Crabbe*, 499; 25 Fed. Cas., 461.

Duties must be held to have been voluntarily paid unless protest was given as prescribed by the statute.—*De Celis v. U. S.*, 13 C. Cls. R., 117.

Warehouse Entries—Liquidation.—The 10 days allowed for protest begin to run upon their ascertainment and liquidation.

The ascertainment and liquidation of duties under R. S. 2931 is the decision of the collector as to what duties shall be made after measurement, weighing, or gauging of the merchandise, its inspection and appraisal, the determination of its dutiable value, and the taking of such other steps as the law may call for; and so far from this being required to be delayed until the importer chooses to withdraw his goods for consumption, it may take place at any time after the original entry of the merchandise, and should follow in the regular course of business as soon after the entry as is convenient, just as in the case of merchandise entered for immediate consumption.—*Merritt v. Cameron*, 137 U. S., 542.

Warehouse Goods—Increased Weight.—Tobacco imported October 8, 1877, warehoused, weighed, and bond given. Withdrawals made in October, November, December, 1877, January, February, March, June, and July, 1878, and duties paid according to weight. On October 20, 1877, tobacco imported, warehoused, weighed, and bond given. Withdrawals on this entry from October, 1877, to December, 1878, and duties paid according to weight. Tobacco imported October 29, 1877, entered, weighed, and bond given. Withdrawals from October, 1877, to July, 1878, and duties paid according to weight. On May 4, 1878, certain inspectors, the collector, and weighers reweighed 19 bales of the tobacco remaining in the warehouse and found an increase in the weight. Subsequently the tobacco all withdrawn and the duties paid according to the first weight. The collector made no demand for the additional duties until a reliquidation was ordered by the Secretary, January 9, 1879. Suit brought April 12, 1879. *Held*, that the reweighing made by the collector and the regular weighers, but of which no notice or order was given and no record made, was not a reliquidation of duties.—*U. S. v. Seidenberg*, 17 Fed. Rep., 227.

Warehouse Goods—Change in Rate.—A change in the ruling of the Treasury Department whereby merchandise in bond, such as is invoiced in this case, is held dutiable at a greatly reduced rate is of no aid to an importer who has not protested against the previous ruling.—*Cadwalader v. Partridge*, 137 U. S., 553.

Warehouse Withdrawals.—There is no new liquidation of duties when goods imported for warehousing are withdrawn from bond, and consequently the 10 days allowed for filing a protest must be computed from the date of the original liquidation, which is made at the same time and in the same manner as when the entry is for immediate consumption.—*Foster v. Simmons*, 9 Fed. Cas., 573.

Under this section the entry of goods within 10 days after which notice of dissatisfaction with the decision of the collector must be given to him by the inspector or his agent in order to authorize a subsequent suit to recover back an excess of duties paid under protest is, in the case of goods entered for warehousing, the entry for the withdrawal of the goods and not the entry for warehousing.—*Iselin v. Barney*, 5 Blatchf., 185; 13 Fed. Cas., 166.

Written Protest Demanded.—A written protest, signed by the party, with a statement of the definite grounds of objection to the duties demanded and paid, is a condition precedent to a right to sue in any court for their recovery.—*Nichols v. U. S.*, 7 Wall., 122.

O. That the general appraisers, or any of them, are hereby authorized to administer oaths, and said general appraisers, the boards of general appraisers, the local appraisers, or the collectors, as the case may be, may cite to appear before them, and examine upon oath any owner, importer, agent, consignee, or other person touching any matter or thing which they, or either of them, may deem material respecting any imported merchandise then under consideration or previously imported within one year, in ascertaining the classification or dutiable value thereof or the rate or amount of duty; and they, or either of them, may require the production of any letters, accounts, contracts, or invoices relating to said merchandise, and may require such testimony to be reduced to writing, and when so taken it shall be filed and preserved for use or reference until the final decision of the collector, appraiser, or said board of appraisers shall be made respecting the valuation or classification of said merchandise, as the case may be; and such evidence shall be given consideration in all subsequent proceedings relating to such merchandise.

SEC. 28.

Subsec. 15: That the general appraisers, or any of them, are hereby authorized to administer oaths, and said general appraisers, the boards of general appraisers, the local appraisers, or the collectors, as the case may be, may cite to appear before them, and examine upon oath any owner, importer, agent, consignee, or other person touching any matter or thing which they, or either of them, may deem material respecting any imported merchandise, in ascertaining the dutiable value or classification thereof; and they, or either of them, may require the production of any letters, accounts, or invoices relating to said merchandise, and may require such testimony to be reduced to writing, and when so taken it shall be filed in the office of the collector, and preserved for use or reference until the final decision of the collector or said board of appraisers shall be made respecting the valuation or classification of said merchandise, as the case may be.

SEC. 16. That the general appraisers, or any of them, are hereby authorized to administer oaths, and said general appraisers, the boards of general appraisers, the local appraisers, or the collectors, as the case may be, may cite to appear before them, and examine upon oath any owner, importer, agent, consignee, or other person touching any matter or thing which they, or either of them, may deem material respecting any imported merchandise, in ascertaining the dutiable value or classification thereof; and they, or either of them, may require the production of any letters, accounts, or invoices relating to said merchandise, and may require such testimony to be reduced to writing, and when so taken it shall be filed in the office of the collector, and preserved for use or reference until the final decision of the collector or said board of appraisers shall be made respecting the valuation or classification of said merchandise, as the case may be.

DECISIONS UNDER THE ACT OF 1909.

Citation of Importers to Appear Before Collectors of Customs.

JURISDICTION OF COLLECTORS OF CUSTOMS.—Subsection 15 of section 28, tariff act of 1909, authorizing appraisers and collectors of customs to "cite to appear before them and examine upon oath any owner, importer, agent, consignee, or other person touching any matter or thing which they may deem material respecting any imported merchandise in ascertaining the dutiable value or classification thereof," does not empower collectors of customs to examine a person so cited as to the dutiable value of imported merchandise, they not being appraising officers.

POWERS OF COLLECTORS UNDER THE ACT OF JUNE 22, 1874—REAPPRAISEMENT.—The act of June 22, 1874 (18 Stat., 190), which provides that after duties have been liquidated the "settlement of duties shall, after the expiration of one year from the time of entry, in the absence of fraud, be final and conclusive upon all parties," was not repealed by the tariff act of 1909, is merely a statute of limitation, and gave no new powers to collectors of customs. A reliquidation

under said act can not include a reappraisal, but must proceed on the basis of the old appraisal.

CITATION FOR UNDISCLOSED ILLEGAL PURPOSE.—Subsection 15 of section 28, tariff act of 1909, does not confine customs officers to the citation of persons in relation to appraisals and original liquidations, but extends to reliquidations by collectors under the act of June 22, 1874 (18 Stat., 190); and the undisclosed illegal purpose of a collector, proceeding under the latter act, to inquire into the dutiable value of merchandise, is no answer to a disobedience of his order, if that order be within the scope of his powers at the time.

PRODUCTION OF BOOKS—CORPORATIONS.—In directing a person, under subsection 15 of section 28, tariff act of 1909, to produce his books, it is not necessary that customs officers should show first that the contents of the books are material evidence; nor is it an answer that the person so directed is a corporation.

SCOPE OF SUBSECTION 15 OF SECTION 28, TARIFF ACT OF 1909.—The scope of subsection 15 of section 28, tariff act of 1909, is not limited because the forfeiture penalty provided in subsection 16 for failure to comply with orders of customs officers made under said subsection 15 can not apply to examinations in aid of reliquidations.—*U. S. v. Calhoun* (D. C.), T. D. 31730; affirmed, *U. S. v. Calhoun, and Bohrn Hat Co. v. U. S.* (C. C. A.), T. D. 34846.

1913 **P.** That if any person so cited to appear shall neglect or refuse to attend, or shall decline to answer, or shall refuse to answer in writing any interrogatories, and subscribe his name to his deposition, or to produce such papers when so required by a general appraiser, or a board of general appraisers, or a local appraiser, or a collector, he shall be liable to a penalty of not less than \$20 nor more than \$500; and if such person be the owner, importer, or consignee, the appraisement which the Board of General Appraisers or local appraiser, or collector where there is no appraiser, may make of the merchandise shall be final and conclusive; and any person who shall willfully and corruptly swear falsely on an examination before any general appraiser, or Board of General Appraisers, or local appraiser or collector, shall be deemed guilty of perjury; and if he is the owner, importer, or consignee the merchandise shall be forfeited, or the value thereof may be recovered from him.

SEC. 28.

1909 Subsec. 16: That if any person so cited to appear shall neglect or refuse to attend, or shall decline to answer, or shall refuse to answer in writing any interrogatories, and subscribe his name to his deposition, or to produce such papers when so required by a general appraiser, or a board of general appraisers, or a local appraiser or a collector, he shall be liable to a penalty of \$100; and if such person be the owner, importer, or consignee, the appraisement which the general appraiser, or Board of General Appraisers, or local appraiser or collector, where there is no appraiser, may make of the merchandise shall be final and conclusive; and any person who shall willfully and corruptly swear falsely on an examination before any general appraiser, or board of general appraisers, or local appraiser or collector, shall be deemed guilty of perjury; and if he is the owner, importer, or consignee, the merchandise shall be forfeited.

1890 **SEC. 17.** That if any person so cited to appear shall neglect or refuse to attend, or shall decline to answer, or shall refuse to answer in writing any interrogatories, and subscribe his name to his deposition, or to produce such papers when so required by a general appraiser, or a board of general appraisers, or a local appraiser or a collector, he shall be liable to a penalty of \$100; and if such person be the owner, importer, or consignee, the appraisement which the general appraiser, or Board of General Appraisers, or local appraiser or collector, where there is no appraiser, may make of the merchandise shall be final and conclusive; and any person who shall willfully and corruptly swear falsely on an examination before any general appraiser, or board of general appraisers, or local appraiser or collector, shall be deemed guilty of perjury; and if he is the owner, importer, or consignee, the merchandise shall be forfeited.

1913 **Q.** That all decisions of the general appraisers and of the boards of general appraisers, respecting values and rates of duty, shall be preserved and filed, and shall be open to inspection under proper regulations to be prescribed by the Secretary of the Treasury. All decisions of the general appraisers shall be reported forthwith to the Secretary of the Treasury and to the Board of General Appraisers on duty at the port of New York, and the report to the board shall be accompanied, whenever practicable, by samples of the merchandise in question, and it shall be the duty of the said board, under the direction of the Secretary of the Treasury, to cause an abstract to be made and published of such decisions of the appraisers as they or he may deem important, to be published either in full, or if full publication shall not be requested by the Secretary or by the board, then by an abstract containing a general description of the merchandise in question, a statement of the facts upon which the decision is based, and of the value and rate of duty fixed in each case, with reference, whenever practicable, by number or other designation, to samples deposited in the place of samples at New York, and such abstracts shall be issued from time to time, at least once in each week, for the information of customs officers and the public.

SEC. 28.

1909 Subsec. 17: That all decisions of the general appraisers and of the boards of general appraisers, respecting values and rates of duty, shall be preserved and filed, and shall be open to inspection under proper regulations to be prescribed by the Secretary of the Treasury. All decisions of the general appraisers shall be reported forthwith to the Secretary of the Treasury and to the Board of General Appraisers on duty at the port of New York, and the report to the board shall be accompanied, whenever practicable, by samples of the merchandise in question, and it shall be the duty of the said board, under the direction of the Secretary of the Treasury, to cause an abstract to be made and published of such decisions of the appraisers as they may deem important, and of the decisions of each of the general appraisers and boards of general appraisers, which abstract shall contain a general description of the merchandise in question, and of the value and rate of duty fixed in each case, with reference, whenever practicable, by number of other designation, to samples deposited in the place of samples at New York, and such abstract shall be issued from time to time, at least once in each week, for the information of customs officers and the public.

1890 **SEC. 18.** That all decisions of the general appraisers and of the boards of general appraisers, respecting values and rates of duty, shall be preserved and filed, and shall be open to inspection under proper regulations to be prescribed by the Secretary of the Treasury. All decisions of the general appraisers shall be reported forthwith to the Secretary of the Treasury and to the Board of General Appraisers on duty at the port of New York, and the report to the board shall be accompanied, whenever practicable, by samples of the merchandise in question, and it shall be the duty of the said board, under the direction of the Secretary of the Treasury, to cause an abstract to be made and published of such decisions of the appraisers as they may deem important, and of the decisions of each of the general appraisers and boards of general appraisers, which abstract shall contain a general description of the merchandise in question, and of the value and rate of duty fixed in each case, with reference, whenever practicable, by number or other designation, to samples deposited in the place of samples at New York, and such abstract shall be issued from time to time, at least once in each week, for the information of customs officers and the public.

1913 **R.** That whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price thereof, at the time of exportation to the United States, in the principal markets of the country from

whence exported; that such actual market value shall be held to be the price at which such merchandise is freely offered for sale to all purchasers in said markets, in the usual wholesale quantities, and the price which the seller, shipper, or owner would have received, and was willing to receive, for such merchandise when sold in the ordinary course of trade in the usual wholesale quantities, including the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, and if there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in the bona fide transportation of such merchandise to the United States, additional duty shall be levied and collected upon such material or article at the rate to which the same would be subjected if separately imported. That the words "value," or "actual market value," or "wholesale price," whenever used in this Act, or in any law relating to the appraisement of imported merchandise, shall be construed to be the actual market value or wholesale price of such, or similar merchandise comparable in value therewith, as defined in this Act.

1913

SEC. 28.

Subsec. 18: That whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price thereof, at the time of exportation to the United States, in the principal markets of the country from whence exported; that such actual market value shall be held to be the price at which such merchandise is freely offered for sale to all purchasers in said markets, in the usual wholesale quantities, and the price which the manufacturer or owner would have received, and was willing to receive, for such merchandise when sold in the ordinary course of trade in the usual wholesale quantities, including the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, and if there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in the bona fide transportation of such merchandise to the United States, additional duty shall be levied and collected upon such material or article at the rate to which the same would be subjected if separately imported. That the words "value," or "actual market value," or "wholesale price," whenever used in this Act, or in any law relating to the appraisement of imported merchandise, shall be construed to be the actual market value or wholesale price of such, or similar merchandise comparable in value therewith, as defined in this Act.

1909

SEC. 19. That whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale quantities, at the time of exportation to the United States, in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale, including the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, and if there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in the bona fide transportation of such merchandise to the United States, additional duty shall be levied and

1890

collected upon such material or article at the rate to which the same would be subject if separately imported. That the words "value" or "actual market value" whenever used in this Act or in any law relating to the appraisement of imported merchandise shall be construed to mean the actual market value or wholesale price as defined in this section.

[NOTE.—The foregoing supersedes section 7 of the tariff act of March 3, 1883. The latter section, with citations of decisions under it and citations of decisions under earlier statutes pertaining to same subject matter, are here inserted for purposes of comparison.]

1883 SEC. 7. That sections twenty-nine hundred and seven and twenty-nine hundred and eight of the Revised Statutes of the United States and section fourteen of the act entitled "An Act to amend the customs revenue laws, and to repeal moieties," approved June twenty-second, eighteen hundred and seventy-four, be, and the same are hereby, repealed, and hereafter none of the charges imposed by said sections or any other provisions of existing law shall be estimated in ascertaining the value of goods to be imported, nor shall the value of the usual and necessary sacks, crates, boxes, or covering of any kind be estimated as part of their value in determining the amount of duties for which they are liable: *Provided*, That if any packages, sacks, crates, boxes, or coverings of any kind shall be of any material or form designed to evade duties thereon, or designed for use otherwise than in the bona fide transportation of goods to the United States, the same shall be subject to a duty of 100 per centum ad valorem upon the actual value of the same.

DECISIONS UNDER THE ACT OF 1913.

Containers of Carbonic-Acid Gas.—Carbonic-acid gas was imported packed under compression in steel tubes or capsules about 2 inches in length and an inch in diameter fitted with air-tight screw caps for use in charging drinking water. It was shown that the gas was purchased as a separate commodity and packed into the capsules for transportation; that the capsules were commonly returned to dealers and sent abroad again in the same service, and that they have no other use. The gas was the *per se* merchandise and the capsules mere containers within the meaning of that word in paragraph R of section 3, tariff act of 1913. Paragraphs K, M, and R of section 3 confine the duty of the appraiser to the merchandise, and his action in advancing the value of the capsules conferred no validity upon the collector's assessment of the additional duty imposed by paragraph I of section 3 in cases where the appraised exceeds the entered value.—U. S. v. Downing & Co. (Ct. Cust. Appls.), T. D. 37052.

Rate of Duty Based on Weight.—Where glue was bought at a gross price, packed in bags, the value per pound, for tariff purposes, was the gross price divided by the net weight in pounds. *United States v. Francklyn* (4 Ct. Cust. Appls., 54; T. D. 33306). Paragraph R of section 3, tariff act of 1913.—U. S. v. Hirsch, Stein & Co. (Ct. Cust. Appls.), T. D. 37226.

Market Value of Grass Baskets Made by Indians.—Where grass baskets are made by a tribe of Indians in their homes and by them sold to dealers, who in turn sell them in wholesale quantities to the trade, the market value is governed by the price obtained by the dealers, rather than the price paid to the Indians.—T. D. 35458 (G. A. 7728).

Appraisement—Dies.—The cost of the die used in stamping articles should be included in the appraised value of the article when it appears that such cost was paid by the purchaser.—Dept. Order (T. D. 34660).

Molds, Plates, or Dies.—Cost of molds, plates, or dies constitutes a part of the market value of merchandise where manufacturer or dealer makes a charge therefor.—Dept. Order (T. D. 33860).

DECISIONS UNDER THE ACT OF 1909.

Cost of Shrinkage of Cloth.—The importer of these woollens incurred certain costs for their inspection and damping in London and the collector added these costs to the entered value. In this he exceeded his authority. These costs so incurred are not charges and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, as provided for in subsection 18 of section 28, tariff act of 1909. *U. S. v. Spingarn* (5 Ct. Cust. Appls., —; T. D. 34002), distinguished.—*U. S. v. Van Ingen & Co. et al.* (Ct. Cust. Appls.), T. D. 34970; (G. A. Ab. 34066) T. D. 33872 affirmed.

Coverings—Display Cases for Pipes.—Show cases imported filled with pipes and intended to be refilled from time to time with other pipes are unusual articles or forms designed for use otherwise than in the bona fide transportation of the merchandise to the United States under subsection 18, section 28, act of 1909. *U. S. v. Hohner* (4 Ct. Cust. Appls., 122; T. D. 33393) and *Vantine & Co.'s case*, G. A. 6710 (T. D. 28702), distinguished.—T. D. 34676 (G. A. 7592).

Spun Silk on Beams a Single Entity.—The merchandise is spun silk on beams, dutiable under that title at a specific rate (par. 397, tariff act of 1909). The beams were separately assessed with duty as manufactures of wood. *Held*, that the beams should be admitted without separate assessment as parts of the entirety "spun silk on beams."—*Stirn v. U. S.* (Ct. Cust. Appls.), T. D. 34092; (G. A. Ab. 31402) T. D. 33217 reversed.

Beams Containing Silk Yarn.—The testimony shows that the beams in question are identical with, used for the same purpose, and brought into this country under the same circumstances as those which were the subject of this board's decision in *Stirn's case*, G. A. 7175 (T. D. 31332), which was reversed by the United States Court of Customs Appeals in *U. S. v. Stirn* (T. D. 32350). In the case at bar a strong argument is made by counsel for the free entry of the beams. The law remains the same as it did when the court rendered its decision in *U. S. v. Stirn*, and if the classification of the articles in question is to be changed the change should be made through a decision of that court.—Ab. 31402 (T. D. 33217).

Wooden Spools with Silk Yarn Thereon.—So far as the record here discloses, the facts in this case were taken below to be the same with the facts in *U. S. v. Ringk* (4 Ct. Cust. Appls., —; T. D. 33530), the collector's classification must stand on the record here.—*U. S. v. Hogan* (Ct. Cust. Appls.), T. D. 34001; (G. A. Ab. 29589) T. D. 32780 reversed.

Protests sustained claiming wooden spools containing silk yarn to be usual containers of merchandise subject to specific duty. Ab. 29613 followed.—Ab. 29589 (T. D. 32780).

Cost of Shrinkage of Cloth.

COLLECTOR'S AUTHORITY.—The collector has no power or authority to assess duty upon merchandise at a value greater than or different from that determined by the last appraisement, except to add items of "costs" or "charges" within the meaning of those words as used in subsection 13, section 28, tariff act of 1909.

MARKET VALUE—COSTS AND CHARGES.—The market value of goods at a given point includes all costs and expense of production and of transportation to and delivery at that market. Only such items of expense as are incurred thereafter are to be considered as "costs" and "charges" to be ascertained by the collector.—*Grinnell v. Lawrence* (1 Blatch., 346; Fed. Cas., 5831).

SHRINKAGE.—An item comprising the cost of examining, shrinking, and preparing English cloth for shipment was added by the collector to the entered and

appraised value as a dutiable charge. *Held*, that this item is a part of the expense of preparing and placing the merchandise in a condition ready for shipment, and therefore a part of the market value of the cloth.—T. D. 33832 (G. A. 7506). Note T. D. 34970, *supra*.

Wooden Spools Entering Into the Value of Their Contents.—These spools were not designed for use otherwise than in the bona fide transportation of the artificial silk yarn which they contained, and as used they entered into the cost and value of their contents as appraised and assessed for duty. They are not "containers or coverings" as those terms appear in subsection 18, section 28, tariff act of 1909, and they are not ratable for duty as a separate entity under the fundamental rule that forbids double taxation. They are dutiable as a part of the contents themselves. *Karthauss v. Frick* (14 Fed. Cas., 136, No. 7615).—U. S. v. *Vandegrift & Co.* (Ct. Cust. Appls.), T. D. 33531; (G. A. Ab. 29613) T. D. 32780 affirmed. Note T. D. 33530, *infra*.

Spools Containing Spun Yarn.—Certain wooden spools containing silk yarn were assessed by the appraiser as manufactures of wood. The silk which they contained was subject to a specific duty.

As we are able to read from the testimony in this case the spools in question were not used for any other purpose than to transport the silk yarn. As to some of them the testimony shows that they were destroyed when the yarn was taken from them. As to others it shows that they were returned to Europe and used for the transportation of more yarn. Our finding, therefore, upon that point is that the spools in question are not designed for use otherwise than in the bona fide transportation of the silk yarn which they contain.—Ab. 29613 (T. D. 32780); decision as to spools used only once, affirmed in T. D. 33531, *supra*; decision as to spools returned to Europe and used over again, reversed in T. D. 33530, *infra*.

Wooden Spools Distinct From Their Contents.—These wooden spools being excluded from subsection 18 of section 28, tariff act of 1909, as they are neither coverings, containers, nor of the costs, charges, and expenses therein provided, they must be rated for duty as though separate and distinct importations under paragraph 215 of that act. *Karthauss v. Frick* (14 Fed. Cas., 136).—U. S. v. *Ringk & Co. et al.* (Ct. Cust. Appls.), T. D. 33530; (G. A. Ab. 29613) T. D. 32870 reversed. Note T. D. 33531, *supra*.

Wooden Tray Boxes Containing Harmonicas.—These tray boxes are used as well to display as to contain harmonicas. The law does not contemplate that these coverings, whose only design, purpose, or use other than for transportation is for displaying the harmonicas, should pay the additional duty imposed by subsection 18 of section 28, tariff act of 1909. That provision must be taken to be intended to prevent the importation, under the guise of coverings or containers, of unusual articles having a substantial, material, and valuable use for other purposes than merely holding or covering merchandise in the bona fide transportation thereof.—U. S. v. *Hohner et al.* (Ct. Cust. Appls.), T. D. 33393; (G. A. Ab. 29490) T. D. 32760 affirmed.

Keene's Cement, How Appraised.

On a review of the decisions and after allowing due weight to the fact that there has been a legislative adoption of a long-continued customs practice, it is held that, according to subsection 18 of section 28, tariff act of 1909, the value of dutiable coverings should be added in determining the proper dividend to be used for ascertaining the rate of duty. The value of the coverings should be added to the value per se of the cement; but in the absence of express provision, may not be considered in determining the weight of the merchandise.—

U. S. v. Francklyn (Ct. Cust. Appls.), T. D. 33306; (G. A. 7346) T. D. 32378 reversed.

DUTIABLE UNDER PARAGRAPH 88, ACT 1909.—Under paragraph 88, tariff act of 1909, Keene's cement valued above \$10 and not above \$15 per ton is subject to a duty of \$5 per ton.

THE BARRELS AS CONTAINERS SHOULD BE ADDED IN APPRAISING THE CEMENT.—The duty being based upon or regulated by the value thereof, subsection 18 of section 28 of said act requires that, in appraising the value of such merchandise, the value of the containers, which are barrels, should be added to the per se value of the cement, and duty should be assessed accordingly on the gross weight of the merchandise as thus ascertained.—T. D. 32378 (G. A. 7346).

Value as the Basis of Rate of Duty Includes Cost of Containers or Coverings.—The duty on goods of the character here involved is required by subsection 18, section 28, tariff act of 1909, to be assessed on the actual market value or wholesale price thereof at the time of exportation to the United States in the principal markets of the country whence they were exported; and "value," as employed in paragraph 448 of that act, must be taken to be the same with the actual market value described in said subsection 18.—*Ascher Co. et al. v. U. S.* (Ct. Cust. Appls.), T. D. 32622; (G. A. Ab. 26335) T. D. 31813 affirmed.

Wooden Beams Wound With Spun Silk.—To be admitted free of duty as a container of merchandise on which a specific duty is imposed, an article should not only be a container, but should be the usual container employed in transporting the goods. The importer failed to overcome by a preponderance of evidence the presumption of the correctness of the collector's finding that the beams in question were unusual containers, if containers they were, and therefore that presumption must prevail. Further, it is admitted that the beams were designed for some other use than the bona fide transportation of the merchandise to the United States. Under such circumstances additional duty would have been properly assessable on the beams even if they had been within the category of containers described by subsection 18 of section 28, tariff act of 1909.—*U. S. v. Stirn* (Ct. Cust. Appls.), T. D. 32350; (G. A. 7175) T. D. 31332 reversed.

Beams Containing Spun Silk.

USUAL ARTICLES OR FORMS COVERING OR HOLDING MERCHANDISE SUBJECT TO SPECIFIC DUTY.—The usual articles or forms for covering or holding merchandise subject to specific duty are free, unless such articles or forms are given a different status by congressional enactment.—*Karthus v. Frick* (14 Fed. Cas., 136); *U. S. v. Leggett* (66 Fed. Rep., 300); *Curtis's case*, G. A. 4947 (T. D. 23131).

UNUSUAL—USE OTHERWISE.—To render articles or forms used for covering or holding imported merchandise dutiable under the provisions of subsection 18 of section 28 of the tariff act of 1909, two conditions must coexist; they must be unusual and must also be designed for use otherwise than in the bona fide transportation of the merchandise.—*Pacific Creosoting Co.'s case*, G. A. 6927 (T. D. 29980); *Pollmann's case*, G. A. 4649 (T. D. 21961).

Wooden beams containing spun silk are not unusual articles or forms for holding such silk within the meaning of subsection 18 of section 28 of the tariff act of 1909. They are entitled to free admission as usual articles or forms for holding merchandise subject to specific duty. *Blumenthal's case*, G. A. 2351 (T. D. 14559), overruled.—T. D. 31332 (G. A. 7175).

Earthenware Jars Containing Ginger.—Decorated earthenware jars containing preserved ginger, assessed for duty as unusual coverings, are claimed in this protest to be usual and dutiable accordingly. It does not appear that these

jars are designed for use otherwise than in the bona fide transportation of their contents. The protest is therefore sustained.—Ab. 27595 (T. D. 32149).

Handkerchief Boxes.—Boxes, in the shape of books, containing handkerchiefs, and classified as unusual coverings, were held to be usual coverings and dutiable at the same rate as their contents.—Ab. 26313 (T. D. 31813).

Papier-Mâché Boxes—Coverings of Ad Valorem Goods.—Separate provision is made by paragraph 418, tariff act of 1909, for boxes made wholly or in chief value of paper or papier-mâché, if covered with surface-coated paper; but such an *eo nomine* designation can not be taken to exclude the article so designated from an applicable part of the customs law enacted to simplify administration and to minimize frauds on the revenue.

The provision of existing law relative to containers impose a duty, for example, on boxes, as boxes alone, when these are imported as merchandise. When they are brought in as usual containers of ad valorem goods they are subject to the specific administrative provision applicable to them when used in that way; and boxes covered with surface-coated paper and composed wholly or in chief value of paper or papier-mâché, containing nettings, are dutiable under paragraph 18, section 28, tariff act of 1909, as usual containers.—*Spielman v. U. S.* (Ct. Cust. Appls.), T. D. 31626; (G. A. Ab. 23441) T. D. 30687 affirmed.

Lighterage.—These protests were sustained (Ab. 23542; T. D. 30710) and rehearing thereafter granted. The facts, as disclosed by the record, are identical with those in *American Express Co.'s case*, Ab. 23157 (T. D. 30572). In that case we said:

It is claimed in this protest that an item of lighterage included in the invoice value of certain pickles is nondutiable. There are no dutiable or nondutiable items. The merchandise only is dutiable under the law, and the law specifies what shall be included in the foreign market value of merchandise. Lighterage is not one of the items which must be included, but when it is so included in the per se value of the merchandise there is no authority for deducting the same. From the meager facts presented by the record in this case we think it falls squarely under the rule laid down by this board in *Smith's case*, G. A. 1660 (T. D. 13239). The protest is therefore overruled.—Ab. 24861 (T. D. 31316).

Tea Coverings.—The merchandise consisted of tea coverings in the form of paper boxes covered with cotton fabrics and bamboo baskets inclosing lithographically printed tin cans. The paper boxes and the bamboo baskets were held free of duty as the usual containers of free merchandise.—Ab. 24860 (T. D. 31316).

Boxes Containing Merchandise Subject to an Ad Valorem Rate of Duty.—Subsection 18 of section 28, tariff act of 1909, is applicable to coverings of merchandise dutiable at an ad valorem rate, and its operation is not suspended by paragraphs 411, 418, or 420.—T. D. 30663 (G. A. 7029).

Straw Covers Containing Empty Bottles are dutiable as unusual coverings, under tariff act of 1909.—Dept. Order (T. D. 30463).

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Air-Tight Coverings, Containers of Solids.—The dutiable value of dry colors, or paints in the form of a fine powder, imported in air-tight kegs, barrels, casks, and tins, includes the value of the containers under the tariff act of 1897, as shown by section 19, customs administrative act of June 30, 1890, as amended July 24, 1897. *Austin, Nichols & Co. v. U. S.* (171 Fed., 79) and *Austin v. U. S.* (1 Ct. Cust. Appls., 465; T. D. 31508) distinguished from each other and from this case.—*Cassela Color Co. et al. v. U. S.* (Ct. Cust. Appls.), T. D. 35975; (G. A. 7699) T. D. 35222 affirmed.

Solids Contained in Water-Tight Coverings.—The decisions of the courts in construing the words "coverings of any kind" appearing in section 19 of the customs administrative act of 1890, and exempting from duty such containers or coverings consisting of hermetically sealed tins, kegs, casks, and barrels, when containing merchandise in a liquid or semiliquid condition subject to ad valorem duty, will not be extended or enlarged so as to exempt from duty identical coverings when containing powder or other merchandise in a dry or solid state. *U. S. v. Nichols* (186 U. S., 298; 22 Sup. Ct. Rep., 918); *Austin v. U. S.* (1 Ct. Cust. Appls., 465; T. D. 31508); *U. S. v. Peabody* (3 Ct. Cust. Appls., 130; T. D. 32383).—T. D. 35222 (G. A. 7699).

Commissions.

PROTEST, SUFFICIENCY OF.—A commissionaire's service is rendered in connection with, on account of, and in consequence of the purchase of goods, is really a part of the transaction of the purchase and shipment of the goods, and the protest here fairly apprised the collector that commissions paid the commissionaire for the purchase of the goods abroad were claimed to be nondutiable.

COMMISSIONS PAID FOR THE PURCHASE OF GOODS ABROAD.—Leaving aside technical questions and treating the dutiability of commissions on its merits, regarding the substance rather than the form, it is clear it was not the intention of Congress to impose a duty upon commissions paid in connection with the purchase of goods abroad. When a payment is a commission proper must depend on the facts in the particular case.—*U. S. v. Bauer et al.* (Ct. Cust. Appls.), T. D. 32627; (G. A. Ab. 27403) T. D. 32089 affirmed.

Containers of Liquids and Semiliquids.

EJUSDEM GENERIS.—Section 19, customs administrative act of 1890, provides that there shall be included in the dutiable value of merchandise subject to an ad valorem rate of duty the value of all cartons, crates, boxes, sacks, and coverings of any kind. The construction of this clause has been established in the light of the rule ejusdem generis, and the containers named have been limited to coverings of dry or solid merchandise. This construction is now adhered to. *U. S. v. Nichols* (186 U. S., 298); *Austin v. U. S.* (1 Ct. Cust. Appls., 465; T. D. 31508).—*U. S. v. Peabody & Co.* (Ct. Cust. Appls.), T. D. 32383; (G. A. 7238) T. D. 31717 affirmed.

ACT OF 1897.—The provision in section 19, customs administrative act of 1890, that there shall be included in the dutiable value of imported merchandise subject to an ad valorem rate of duty the value "of all cartons, crates, boxes, sacks, and coverings of any kind" is to be construed in the light of the rule of ejusdem generis and is limited to coverings of dry or solid merchandise. *U. S. v. Kimpton* (T. D. 31510) and *Austin, Nichols & Co. v. U. S.* (T. D. 31508).

ACT OF 1909.—A contrary rule would seem to prevail under section 18 of the present tariff act of August 5, 1909.—T. D. 31717 (G. A. 7238).

Stoneware Ink Bottles Not "Coverings."—Following and in accord with the reasoning of *Austin, Nichols & Co. et al. v. U. S.*, *infra* (T. D. 31508), no distinction could be made in containers between stoneware bottles and those of glass, and so stoneware bottles were not dutiable as "coverings" in the sense that term is employed in section 19, customs administrative act of 1890; and, as with glass bottles, their value should not have been added to the dutiable value of their contents.—*U. S. v. Kimpton* (Ct. Cust. Appls.), T. D. 31510; (G. A. 7083) T. D. 30873 affirmed.

Stoneware bottles containing ink subject to an ad valorem duty are not "coverings" within the meaning of section 19, customs administrative act of June 10, 1890, and their value should not be added to the dutiable value of their

contents under the provision of said section. Following *Kimpton v. U. S.* (171 Fed. Rep., 78; T. D. 29814).—T. D. 30873 (G. A. 7083).

Coverings—Ejusdem Generis.

SECTION 19. CUSTOMS ADMINISTRATIVE ACT OF 1890.—In the construction of section 19, customs administrative act of 1890, following the rule ejusdem generis laid down in *U. S. v. Nichols* (186 U. S., 298), the words "coverings of any kind," appearing in that section must be taken to include coverings previously named therein, or coverings similar in kind, and used only to convey solids.

CONTAINERS OF LIQUIDS AND SEMILIQUIDS.—Containers of liquids or semiliquids do not come within the descriptive language "Cartons, cases, crates, boxes, sacks, and coverings of any kind" as these words stand in said section 19, customs administrative act of 1890.—*Austin, Nicholas & Co. et al. v. U. S.* (Ct. Cust. Appls.), T. D. 31508; (G. A. 7082) T. D. 30872 reversed.

Coverings—Containers of Liquids.

TIN CANS—STONEWARE CONTAINERS—WOODEN CASKS, ETC.—Wooden casks, tin cans, barrels, and earthenware jars, and like coverings, containing various kinds of merchandise, whether solids, semisolids, or liquids, subject to ad valorem duties, are "coverings" or "cases" within the meaning of section 19, customs administrative act of June 10, 1890, and as such their value should be added to the value of their contents in order to make dutiable value under the provisions of said section. Following *Austin v. U. S.* (171 Fed. Rep., 79; T. D. 29813), affirming 165 Fed. Rep., 236 (T. D. 29361); and board decision *In re Austin*, G. A., 6704 (T. D. 28686).—T. D. 30872 (G. A. 7082).

Metal Drums Containing Creosote Oil.—The inconvenience likely to follow a decision here will not be allowed to defeat the text and spirit of the law, nor will a previous illegal practice, and the Congress will not be presumed to have intended an importer could bring in free of duty durable metal drums of considerable value containing creosote oil, and mingle these drums when emptied of their contents with other articles of commerce in the trade of the United States; and such metal drum containers are dutiable under section 19 of customs administrative act of June 10, 1890.—*Pacific Creosote Co. v. U. S.* (Ct. Cust. Appls.), T. D. 31407; Ab. 22760 (T. D. 30364) affirmed.

Dutiable Value on Date of Exportation.—A shipment of goods from one point to another within a country for transshipment beyond that country is not then a true exportation; and such a shipment becomes a true exportation only, and takes its valuation, as of the date the vessel with these goods on board is cleared for the United States. *Almy v. State of California* (24 How., 169) distinguished.—*Roessler & Hasslacher Chemical Co. v. U. S.* (Ct. Cust. Appls.), T. D. 31353; (Ab. 21579) T. D. 29906 affirmed.

Boxes Containing Powder Puffs—Usual Coverings.—Paper boxes with glass tops, each box containing a wool powder puff made of lambs' wool, are usual coverings for such puffs and are dutiable only at the ad valorem rate of the contents.—T. D. 30313 (G. A. 6973).

Coverings of Garlic—Cane Baskets.—It appears from the collector's report that a majority of the garlic imported through Laredo comes packed in baskets. The importer submitted his case on a sample and a certificate of the inspector of customs, in which he states that about one-third of the baskets were broken and useless. The sample submitted is frail and apparently worthless for any use.

To come under section 19 of the customs administrative act of 1890, coverings must not only be unusual but must be designed for use otherwise than in the bona fide transportation of their contents, and it does not appear from all that

is before us that the baskets in question were so designed. *Kronfeld's case*, Ab. 13508 (T. D. 27729).—Ab. 22123 (T. D. 30111).

Unusual Coverings.

TARIFF LAW UNIVERSAL IN APPLICATION.—Every provision of the tariff law is universal in its application and applies to all ports alike. Therefore, in determining what is the usual covering of any merchandise it is necessary to consider the covering used to import that merchandise into all of the several ports of entry into which it is imported in the United States.

IRON DRUMS UNUSUAL COVERINGS FOR CREOSOTE OIL.—Iron drums costing more than their contents, which were not used at the time of the passage of the tariff law as containers of creosote oil imported into this country, in which only one-tenth of all creosote oil is imported, used only in four of the sixteen ports into which such oil is imported, and sold by the importers at approximately their foreign cost for use in transporting other oil in this country, held to be unusual coverings, designed for use otherwise than in the bona fide transportation of creosote oil to the United States.—T. D. 29980 (G. A. 6927).

Stone Bottles Not Coverings.—Stone bottles containing merchandise subject to an ad valorem duty are not "coverings" within the meaning of section 19, customs administrative act of 1890, and their value should not be added to the dutiable value of their contents.—*Kimpton v. U. S.* (C. C. A.), T. D. 29814; T. D. 29361 (C. C.) and (G. A. Ab. 18478) T. D. 28889 reversed.

Stone Bottles as Coverings—Ejusdem Generis.—In construing the provision in section 19, customs administrative act of 1890, that the dutiable value of imports subject to "an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof," shall include "the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind," *Held*, that the term "coverings" is not limited to encasements similar to the "cartons, cases," etc., that are specified in the law, and that the provision covers containers of liquids or semiliquids, such as tins, kegs, barrels, and stoneware jars, bottles, and terrines.—*Kimpton v. U. S.* (C. C.), T. D. 29361; reversed in T. D. 29814; *supra*.

Coverings—Ejusdem Generis.—Tin cans and stoneware receptacles known as terrines, containing vegetables, fish paste, and pâté de foie gras, are either "cases" within the meaning of section 19, customs administrative act of 1890, or are coverings similar to the "cartons, cases, crates, boxes," etc., there enumerated; and as such their value should be added to the value of their contents to make dutiable value, as provided in said section.—*Austin v. U. S.* (C. C. A.), T. D. 29813; (165 Fed. Rep., 236) T. D. 29361 and (Ab. 18478) T. D. 28889 affirmed.

Coverings—Earthenware Teapots.—Earthenware teapots containing tea are not free of duty, but are subject to classification under paragraph 96, tariff act of 1897, being held to be coverings or containers designed for use otherwise than in the bona fide transportation of tea from foreign markets to the United States, and therefore dutiable as if separately imported.—T. D. 29801 (G. A. 6013).

Unusual Coverings for Toothpicks.—The protest related to miniature models of houses made of paper and straw and furnished with a small drawer containing toothpicks.

In *Marshall Field's case*, G. A. 3743 (T. D. 17757), the board held that similar coverings were unusual, and from all that is before us in this case we do not feel warranted in disturbing that rule.—Ab. 21234 (T. D. 29763).

Coverings—Articles Ejusdem Generis with Cartons, Etc.—All coverings containing imported merchandise, if ejusdem generis with cartons, cases, crates,

boxes, or sacks, should be treated either as usual or unusual coverings under section 19 of the customs administrative act of 1890.

Cotton kimonos, which are usually imported without boxes, were, as a matter of convenience and to make less bulk, packed in paper boxes which were subsequently to be used for other purposes. *Held*, that the boxes are coverings within the meaning of section 19 of the customs administrative act of 1890.—T. D. 28702 (G. A. 6710).

Coverings—Containers of Liquids.—Section 19 of the customs administrative act (26 Stat., 131) must be construed so as to correct the evil which it was designed to remedy, as brought to the attention of Congress at and before the time of its enactment. This evil was the difficulty encountered in administering section 7, tariff act of 1883, as construed by the Supreme Court in *Oberteuffer v. Robertson* (116 U. S., 499).

In appraising merchandise under section 19, customs administrative act of 1890, the dutiable value of imported goods is to be ascertained by including in the total value that of such containers or coverings as stone jars, tins, casks, and other like encasements of merchandise subject to an ad valorem duty, unless such coverings are separately made subject to duty under the provisions of the tariff act, as bottles, for example. *U. S. v. Nichols* (186 U. S., 298) distinguished.—T. D. 28686 (G. A. 6704).

Unusual Coverings.

CUMULATIVE DUTIES.—Section 19, customs administrative act of 1890, prescribes that the dutiable value of goods subject to an ad valorem duty shall include the cost of their coverings, and that when the coverings are unusual they shall be assessed with "additional duty at the rate to which the same would be subject if separately imported." *Held*, that this does not mean that the "additional duty" is in lieu of the duty which would accrue on unusual coverings by including their cost in the dutiable value of their contents, but that such coverings are liable to the duty in both forms.—*U. S. v. Park* (C. C. A.), T. D. 27833; T. D. 26973 (C. C.) and (G. A. 6111) T. D. 26608 reversed.

WINE IN BOTTLES.—Wooden cases equipped with iron hinges, hasps, and staples and prepared so as to admit of being locked, which are used as coverings for bottled wine and are patented, are unusual coverings for such imported merchandise and are subject to the same rate of duty as that which would be chargeable if separately imported.

The fact that the contents are subject to specific instead of ad valorem duties would not modify this principle or change the classification of the goods as manufactures of wood under paragraph 208, tariff act of 1897.—T. D. 27797 (G. A. 6509).

Duty on Fractional Parts of the Dollar.—The practice at the several ports for customs officers to ignore, as a matter of mutual consent, fractional parts of a dollar less than 50 cents in the invoice or entered value of goods and to count 50 cents and upward as a dollar in assessing duties on importations of merchandise is a reasonable and desirable one and would seem in the long run to operate as favorably to the importers as to the Government. Such practice is justified under the legal maxim *de minimis non curat lex* (the law does not notice or care for trifling matters).—T. D. 27718 (G. A. 6479).

Domestic, not Export, Value Governs.—Where appraisers ascertain the market value of goods exported from a foreign country under the provisions of section 19 of the customs administrative act, such value is regulated by the price at which such goods are bought and sold in usual wholesale quantities for home consumption at the time of exportation and not by the export price

of such goods where the two values differ.—*U. S. v. Passavant* (169 U. S., 16; 18 Sup. Ct. Rep., 219).—T. D. 27204 (G. A. 6309).

Market Value.—The words in section 19 “in the condition in which such merchandise is there bought and sold for exportation to the United States” have a general rather than a special significance, and relate to the condition in which merchandise, such as that under consideration before an appraising officer, is generally bought and sold in the country from whence that particular merchandise is exported rather than the condition in which any particular merchandise is at the time it is exported. *Lawder v. Stone*, collector (187 U. S., 281), and *American Sugar Refining Co. v. U. S.* (181 U. S., 610).—T. D. 26956 (G. A. 6247).

Tea Canisters—Usual Coverings.—*Held*, that certain metal canisters of the kind in which tea has been imported to some extent, and of such construction as to be adapted for further use after the tea has been removed, are not subject to the additional duty on coverings provided in section 19, customs administrative act of 1890, for “any unusual article or form designed for use otherwise than in the bona fide transportation” of its contents to the United States.—*Nixon v. Howland* (C. C.), T. D. 26877.

French Local Taxes on Alcohol.—Taxes known in France as “droit de ville” and “octroi,” which are special local taxes assessed on alcohol consumed in the markets of France, are nondutiable items and should not be added to make market value of goods containing alcohol exported from that country.—T. D. 26771 (G. A. 6168).

Market Value and Dutiable Charges—Functions of Appraisers.—The customs administrative act of June 10, 1890 (secs. 10, 13, 19), places all questions respecting the value of imported merchandise and coverings, and the ascertainment of the charges made dutiable by that act, within the exclusive jurisdiction of appraising officers.

Collectors of customs have no power under said act to vary the market value of imported merchandise as returned by the appraiser, either by way of adding so-called dutiable charges or otherwise, except that they may not assess duty upon less than the invoice or entered value.

The power which the collector has to determine the invoice value of imported merchandise, under section 7 of said act of 1890, permits him to consider merely those items in the invoice which according to their invoice description are elements of dutiable value, as defined by section 19 of said act, and does not involve the right to include items ostensibly nondutiable.—T. D. 26514 (G. A. 6082).

Time of Exportation.—In assessing duty on imported merchandise upon its value “at the time of exportation to the United States,” as provided in section 19, customs administrative act of June 10, 1890, the date of the certification of the invoice by the United States consul is conclusive evidence of the time of exportation, by virtue of section 25, tariff act of 1894, which provides that “in estimating the value of all foreign merchandise exported to the United States the date of the consular certification of any invoice shall be considered the date of the exportation.”—*U. S. v. Lawrence* (C. C. A.), T. D. 26121; T. D. 25073 (C. C.) reversed.

Dutiability of Commissions.

These proceedings were brought by the United States (T. D. 24728) for the review of the decision in the case of *In re Alexander Smith & Sons Carpet Co.*, G. A. 5443 (T. D. 24721), which reversed the assessment of duty by the collector of customs at the port of New York.

The decision of the Board of General Appraisers is affirmed on the authority of *U. S. v. Lahey* (T. D. 25393), the opinion in which is filed on this date.

COMMISSIONS.—Commissions paid to an agent as compensation for his services in purchasing goods are not dutiable. *U. S. v. Herrman* (91 Fed. Rep., 116; 33 C. C. A., 400), affirming *In re Herrman*, G. A. 1288 (T. D. 12633).

The seller of goods can not properly charge a commission on the sale of his own merchandise.

DUTY OF CUSTOMS OFFICERS.—It is the duty of customs officers to inquire into the real nature and rightfulness of so-called commissions or other charges claimed by the importers to be nondutiable.

ADMISSIONS UNDER OATH.—The rule of evidence that, in many cases connected with the administration of public justice and of government, admissions made under oath are conclusive, discussed and approved.

But the mere fact that an admission was made under oath does not render it conclusive.

RECITAL OF MATTERS INVOLVING JUDGMENT—ESTOPPEL.—If an invoice contains an imperfect description of the relations existing between the makers of the invoice and the importers, the latter are not precluded by their oath to the correctness of the invoice from explaining and corroborating the facts to which they have sworn. Especially is this the case where the relation of the parties may be viewed in more than one aspect and the determination of it involves a certain degree of judgment. *U. S. v. May* (26 Fed. Cas., 1224) applied.—*U. S. v. Smith & Sons Carpet Co.* (C. C.), T. D. 25394.

Decorated Earthenware—Whisky Jugs.—Earthenware jugs imported filled with whisky, in packages each containing not less than one dozen jugs, as prescribed by paragraph 296, act of July 24, 1897, are entitled to free entry as the usual coverings for merchandise subject to specific duty, and not dutiable at 60 per cent ad valorem under paragraph 95. G. A. 5611 (T. D. 25106) modified.—T. D. 25534 (G. A. 5772).

Royalty as Part of Market Value.—A license fee or royalty paid for the right to use a certain process for making soap is not a part of the dutiable value of machinery imported to be used in connection with making soap by that process. *Featherstone's case*, G. A. 4572 (T. D. 21655), distinguished; *U. S. v. Leigh* (39 Fed. Rep., 764).—T. D. 25176 (G. A. 5637).

Tea Caddies—Unusual Coverings.—*Held*, that certain tin tea chests or cases known as "Toohey's patent excelsior tea caddies," which are used as coverings or containers of tea in its transportation, and which, after having subserved that purpose, are used, and are designed to be so used, for other purposes, are subject to the additional duty provided in section 19, customs administrative act of June 10, 1890, for "any unusual article or form designed for use otherwise than in the bona fide transportation" of merchandise to the United States.—*Jackson v. Siegfried* (C. C.), T. D. 25114.

Drawback Allowed by German Government.—The drawback allowed by the German Government on goods exported from Germany is a dutiable item, and should be included in the market value of the merchandise. *U. S. v. Passavant* (169 U. S., 16), *In re Goldenburg*, T. D. 21939 (G. A. 4638).—T. D. 25103 (G. A. 5608).

Commissions.—Where an item of "commissions" is added by appraising officers to the per se value of merchandise in order to make up its foreign market value, such item can not be held to be nondutiable. *U. S. v. Herrman* (91 Fed. Rep., 116; 33 C. C. A., 400). *In re Lahey*, G. A. 5472 (T. D. 24780), distinguished.—T. D. 24828 (G. A. 5504).

French Revenue Taxes.—The French general internal revenue tax on alcohol, which is not collected on goods exported, is a part of the dutiable value of such goods when purchased in the markets of France; but local taxes, designated as "octroi" and "droit de ville," which vary with the locality, can not properly be considered as elements of market value. *Rheinstrom v. U. S.* (118 Fed. Rep., 303), affirming *In re Rheinstrom*, G. A. 4368 (T. D. 20761).—T. D. 24653 (G. A. 5414).

Duty on Unusual Coverings—Trunks.—In construing the provision in section 19, customs administrative act of June 10, 1890, for an "additional duty" on unusual coverings of imported merchandise, *Held*, that this duty is additional only to that assessed on the merchandise itself, including the usual coverings, and that the value of the unusual coverings should not be included in the dutiable value of the merchandise.

A new leather trunk, being an unusual covering for imported silk merchandise, is subject to no other duty than that provided in paragraph 450, tariff act of 1897, for manufactures of leather, just as if it were separately imported.—T. D. 24622 (G. A. 5405).

Glass Jars—Ejusdem Generis.—Glass jars are not "coverings," within the meaning of section 19, customs administrative act of June 10, 1890, not being ejusdem generis with the kinds of coverings enumerated therein, and a distinction having been preserved between such articles and ordinary coverings by Congress in the course of legislation extending through many years. *U. S. v. Nichols* (186 U. S., 298; 22 Sup. Ct. Rep., 918) followed.

Under the tariff act of 1894, which does not enumerate glass jars, such articles, when filled with merchandise subject to an ad valorem rate or duty are not themselves dutiable, either as coverings, under section 19 of the customs administrative act of June 10, 1890, or otherwise. *In re Dietrich*, G. A. 5371 (T. D. 24551), and *Merck v. U. S.* (99 Fed. Rep., 432) followed.—T. D. 24578 (G. A. 5383).

Wooden Boxes as Coverings for Sumatra Tobacco.—Wooden boxes containing Sumatra tobacco, though not the usual coverings for such merchandise, are not subject to the additional duty prescribed in section 19, customs administrative act of June 10, 1890, as they are not "designed for use otherwise than in the bona fide transportation of such merchandise to the United States." *In re Laverge*, G. A. 4422 (T. D. 21057), overruled; *Laverge v. U. S.* (119 Fed. Rep., 481) followed.—T. D. 24190 (G. A. 5268).

Furniture Vans as Coverings.—Furniture vans made of wood, and containing household effects, are not free of duty as the usual coverings of such effects, but are dutiable as manufactures of wood at 35 per cent ad valorem, under paragraph 208, tariff act of 1897.

In the enumeration in section 19 of the customs administrative act of "cartons, cases, crates, boxes, sacks, and coverings of any kind," the rule of ejusdem generis applies to the words "coverings of any kind," and the paragraph so construed excludes such articles as furniture vans. *U. S. v. Austin* (22 Sup. Ct. Rep., p. —).—T. D. 23817 (G. A. 5164).

Apportionment of Charges.—Where an importer claims that certain charges appearing on his invoice have been incorrectly apportioned by the collector in making his assessment of duty, it is incumbent upon such importer to make affirmative proof before the board of classification that the action of the collector was in violation of law, or was otherwise inequitable and unjust; and, if he fails to do so, the collector's action will not be disturbed.—T. D. 23620 (G. A. 5107).

Iron Drums Containing Glycerin.—The usual coverings of goods subject to a specific rate of duty are properly free, unless made dutiable by some express provision of law. *U. S. v. Leggett* (66 Fed. Rep., 300; 13 C. C. A., 450); *In re Irsch* (G. A. 3350) followed.

Iron drums are, and long have been, the usual and necessary coverings of crude glycerin, and are entitled to free entry as such.—T. D. 23131 (G. A. 4947).

Leather Coverings.—Leather cases are the usual and ordinary coverings of medicine tumblers, and are accordingly dutiable at the same rate as their contents.—T. D. 23056 (G. A. 4926).

Packing Charges are Part of Dutiable Value.—Packing charges and cases, when used as coverings and not specifically exempted from duty, should be added to the price paid per yard in ascertaining the dutiable value of woven cloth per yard. Both items constitute the purchase price and market value of the merchandise and form the basis of ad valorem assessment of duty. *U. S. v. Wood* (85 Fed. Rep., 212), and *U. S. v. Keene* (84 Fed. Rep., 330), cited and followed. T. D. 20358 approved, and *U. S. v. Dickson* (73 Fed. Rep., 195), and G. A. 4757, distinguished.—T. D. 22469 (G. A. 4759).

Free Coverings Not Included in Dutiable Value of Their Contents.—The provision in paragraph 387, tariff act of 1894, admitting to free entry boxes and other coverings of American manufacture, including those made from shooks of American origin, constitutes an exception to section 19, customs administrative act of June 10, 1890, which provides that the cost of covering shall be included in the dutiable value of their contents.

In finding the value of goods for the purpose of ascertaining their value per pound or other unit of value, in cases where the rate of duty is dependent upon their value per such unit, the same value shall be taken as that which is found to be their dutiable value. Therefore, where the coverings are free as being of American origin their value should not be included in finding the value per unit.—T. D. 22462 (G. A. 4757).

Coverings—Bronze Powder Boxes.—Tin boxes containing bronze powder, designed only for the bona fide transportation thereof, and not fit or intended for other uses, are the usual coverings for such merchandise, and therefore not subject to duty as such. T. D. 21757 (G. A. 4597), reversed, and T. D. 21961 (G. A. 4649); T. D. 22241 (G. A. 4711); 59 Fed. Rep., 450; 84 id., 443; 96 id., 94, followed.—T. D. 22361 (G. A. 4725).

Portfolios.—Cardboard portfolios, containing lithographic natural history charts, are free of duty as the usual coverings of such merchandise which is subject to a specific rate of duty.—T. D. 22241 (G. A. 4711).

Glass Tubes Containing Ethyl Chloride.—Glass tubes, drawn out to a small end, with an exceedingly fine aperture, and closed with a rubber-lined metal cap, are not bottles, nor are they unusual coverings for chloride of ethyl, but are designed for no other use than the bona fide transportation of such merchandise to the United States, and are therefore not subject to the separate or additional duty provided in section 19 of the customs administrative act of June 10, 1890, for unusual articles or forms used for covering or holding imported merchandise.

Such coverings are free of duty when the contents are subject to a specific duty, but are dutiable only at the same rate as such contents, as a part of the dutiable value thereof, when the latter are subject to an ad valorem rate of duty. *In re Hempstead* (C. C.), 96 Fed. Rep., 94.—T. D. 22038 (G. A. 4662).

Drawback Allowed by the Governments of Italy and France.—The amount of drawback allowed by the Governments of Italy and France on exported

articles is a dutiable item, and should be included in the ascertainment of the market value of merchandise. Decisions by the circuit court for the southern district of New York, in *Romeo v. U. S.* and *Goldenberg v. U. S.* (both unreported), *U. S. v. Passavant* (169 U. S., 16; 18 Sup. Ct. Rep., 219), *In re Goldenberg* (G. A. 3577), *In re Passavant* (G. A. 4074), and *In re Balbi* (G. A. 4078), followed.—T. D. 21939 (G. A. 4638).

Furniture Vans are Coverings.—Furniture or luggage vans containing household effects are not, like vessels or cars, subject to special laws which exempt them from the provisions of the general tariff laws, and a protest claiming their free entry on that ground will be overruled without determining the question of the correctness of the collector's decision in assessing them as unusual coverings.—T. D. 21893 (G. A. 4622). *

Coverings for Razor Blanks.—To entitle a covering to be considered usual and necessary for transportation, it must accompany and inclose the specific imported article which is intended to be put in it for its use and transportation.

Paper cases or boxes of the kind ordinarily in use for razors are not usual coverings for razor blanks.—T. D. 21858 (G. A. 4614).

Royalty Fees as an Element of Dutiable Value.—A royalty fee, paid by a purchaser of tires for bicycle wheels, for the right to make and the right to sell them, is properly included as a part of the market value of such merchandise, constituting a part of the cost to the maker or vender, and a factor in the selling price of the article. *U. S. v. Leigh* (39 Fed. Rep., 764), followed.—T. D. 21655 (G. A. 4572).

Salt Sacks.—Sacks or bags containing salt, and made of flax, being the usual coverings of such imported merchandise, are free of duty for the reason that the contents are subject to a specific and not an ad valorem rate of duty under paragraph 284, tariff act of 1897. Following *U. S. v. Leggett* (13 C. C. A., 450).—T. D. 19131 (G. A. 4104).

Lekin Tax.—The so-called "lekin tax" of China is an export tax, levied by the "Lekin Board" of Chinese officials, and is imposed on all exported fire-crackers, being paid by native manufacturers and merchants before the goods can be exported. It is not, therefore, an element to be considered in determining for dutiable purposes the market value of such goods in China.—T. D. 18950 (G. A. 4075).

Drawback Allowed by German Government.—In ascertaining the market value and wholesale price of goods in Germany, the country of exportation, it is proper to include a so-called "German duty," which, in effect, is a bonus, drawback, or remission of taxes by the German Government on goods there manufactured in bond and withdrawn for export, but which would have been payable if the goods had been withdrawn for sale in the open markets of Germany. *U. S. v. Passavant* (18 Sup. Ct. Rep., 219), followed. *In re Passavant* (G. A. 1602) reversed; *In re Goldenberg* (G. A. 3577) approved.—T. D. 18949 (G. A. 4074).

Clerical Error.—Where an importer voluntarily enters merchandise on an invoice known to be imperfect, as failing to specify the value of nondutiable coverings (secs. 3 and 5, act of June 10, 1890), the Board of General Appraisers will not, under its authority to correct clerical errors, reverse the collector's decision rejecting corrected invoices offered on liquidation.—T. D. 18409 (G. A. 3966).

Charges on Merchandise Packed in Glass Bottles.—Where merchandise, which is subject to ad valorem duties, is contained in glass bottles subject to specific duties, charges for fitting out the goods by the use of labels, cappings,

ribbons, cartons, etc., designated as "Ausstattung" charges, should be equitably distributed by apportionment in accordance with the pro rata value of the contents and the coverings. In re Stern (G. A. 1672) approved and followed.—T. D. 18235 (G. A. 3945); reversed in T. D. 24262.

Inclusion of Nondutiable Items in Entered Value of Consigned Goods.—Sugar imported and invoice price given as 2½ cents, which included ocean freight, cost of packages, export duty, brokerage of one-half of 1 per cent, lighterage, weighing and receiving, insurance, storage, petties, and commissions 2½ per cent. The importers deducted ocean freight, export duty, lighterage, and petties. The collector compelled them to deduct brokerage, weighing and receiving, storage, insurance and commissions. The appraised value then exceeded the entered value by 10 per cent. Duty was then assessed at 40 per cent under paragraph 182½, act of 1894, and 24 per cent additional on account of difference between entered and appraised value. *Held*, that the items of brokerage, weighing and receiving, storage, insurance and commissions, are nondutiable items; that what is forbidden by law to be done directly can not be done indirectly, and that the inclusion of nondutiable items in the entered value would come within the prohibition.—T. D. 16953 (G. A. 3381).

Disallowance of Commissions.—An addition made to the invoice by disallowing commissions claimed, which was done to make market value, can not be construed as disallowing a nondutiable commission.—T. D. 16646 (G. A. 3291).

Straw Coverings for Bottled Merchandise.—Straw coverings for bottled malt extract are not unusual coverings and are not subject to additional duty.—T. D. 16568 (G. A. 3264).

Commission.—The appraisers may disallow so-called commissions to make market value.—T. D. 16531 (G. A. 3249).

Glass Jars Containing Pickles and Preserves are dutiable, at the rate applicable to their contents, as usual coverings and are not bottles nor vials dutiable under paragraph 88, act of 1894.—T. D. 16098 (G. A. 3062).

Bottles Containing Angostura Bitters.—Bottles containing less than 1 pint and more than one-fourth of a pint, containing Angostura bitters (dutiable under par. 240, act of 1894), are free as usual coverings.—T. D. 15852 (G. A. 2952).

Barrels Containing Plaster.—The barrels in which calcined plaster is imported are usual coverings, and the weight of the barrels is not to be included in the dutiable weight.—T. D. 15678 (G. A. 2859).

Peas in Bags.—Bags in which peas (dutiable under par. 281, act of 1890) were imported held to be usual coverings, free, and not dutiable as manufactures of cotton.—T. D. 15075 (G. A. 2628).

Lemon Boxes.—Lemons imported and the value separately stated, but the cost of boxes, paper, packing, cartage, and shipping specified under the head of charges. The appraiser reported packages as valued at 1 peseta each, but the collector assessed duty on the invoiced price, which included paper, etc. *Held*, that duty should have been assessed on the appraised value of the boxes and not on the cost of the paper, etc.—T. D. 15017 (G. A. 2594).

Dutiable Value Includes Cost of Coverings, Whether Foreign or Domestic.—Italian cloths assessed under paragraph 394, act of 1890. The appraised value included the value of the cases, which were of American manufacture returned. *Held*, that this section requires the appraiser to include all costs and charges.—T. D. 14929 (G. A. 2558).

Charges that Accrued After Goods were Packed.—The invoice included certain charges which accrued after the merchandise was packed ready for shipment to the United States. *Held*, that the collector should have permitted the importer to deduct such charges to make dutiable value.—T. D. 14713 (G. A. 2435).

Commissions.—Commission added not to make market value, but because the goods were consigned. *Held* to have been erroneously added.—T. D. 14641 (G. A. 2399).

Dressed Sealskins—Commission on the Raw Skins.—Raw skins bought on the order of the importer by the shipper who dressed them and charged a commission for purchasing the raw skins. When purchased the raw skins were free, but they were subsequently converted into dutiable merchandise. *Held*, that the commission which was stated on the invoice was a part of the dutiable value of the finished article.—T. D. 14601 (G. A. 2359).

Silk-Warp Beams.—Spun silk beamed or warped imported. The beams are wooden cylinders centered with iron journal bearings, to be set in looms (wood being chief value), and are not coverings.—T. D. 14559 (G. A. 2351).

Gratuitous Importation Dutiable.—Paintings and frames invoiced at prices or values specified and certain other frames invoiced with no prices specified but with a statement that they were furnished gratuitously in the nature of a bonification. *Held*, that the value of the goods as specified in the invoice must be taken, that gratuitous importations are dutiable, and that the frames invoiced without value are dutiable at their appraised value.—T. D. 14558 (G. A. 2350).

Boxes Containing Artists' Water Colors.—Japanned boxes containing colors, commonly called water colors, held to be the usual coverings for such colors.—T. D. 13967 (G. A. 2072).

Chinese Export Tax Not Dutiable.—The Chinese export tax imposed on wool is not a cost, charge, or expense incident to placing the merchandise in a condition packed ready for shipment and is not a dutiable charge.—T. D. 13955 (G. A. 2060).

Inland Charges on Turkish Ore.—The cost of transporting Turkish ore from the mines in the interior of Syria to Ourmelia, a shipping port on the Sea of Marmora, held not to be dutiable charges.—T. D. 13889 (G. A. 2042).

Brokerage on Wool.—Brokerage charges on wool accrued before the merchandise was packed ready for shipment held not to form part of the dutiable value.—T. D. 13812 (G. A. 2006).

Charges for "Bringing Into Godowns."—Charge for the expense incurred in shaking the dirt out of wool is dutiable value.

Charges on wool for "bringing into godowns," which means the expense of carrying the merchandise into the warehouse after purchase and prior to exportation, is not a dutiable charge.—T. D. 13755 (G. A. 1949).

Passenger's Trunk Containing Dutiable Wearing Apparel.—A passenger's trunk containing dutiable wearing apparel is dutiable as a covering and its value was properly added to the value of the contents.—T. D. 13753 (G. A. 1947).

Charges for Inland Freight Not Specified in Invoices.—Protest against the action of the appraisers in adding to the invoice price, to make market value, alleged charges for inland freight from Manchester to Liverpool overruled because not separately specified in the invoice and entry.—T. D. 13555 (G. A. 1827).

Inland Transportation of Rugs to Smyrna.—Inland transportation charges on rugs to Smyrna held to be dutiable. Smyrna is one of the principal markets of Turkey and the dutiable value of the goods is their value at Smyrna.—T. D. 13514 (G. A. 1816).

Jars Containing Fish Paste, Etc.—Decorated earthenware jars filled with fish paste, anchovy and other sauces, are not unusual coverings and are not subject to duty of 60 per cent under paragraph 101, act of 1890, in addition to 45 per cent assessed on the jars with their contents.—T. D. 13513 (G. A. 1815).

Cost of "Putting Up and Knocking Down" Machinery Abroad.—The cost of putting up or knocking down machinery is not a dutiable charge.—T. D. 13504 (G. A. 1806).

Lighterage Charges Must be Specified in Invoice.—Lighterage is a non-dutiable charge, but where embraced in the gross invoice value the importer is debarred from making the objection. The law does not contemplate that nondutiable charges shall be included in the declared per se value of the goods and a deduction therefor be afterwards claimed.—T. D. 13239 (G. A. 1660).

Brokerage and Lot Money on an importation of tanned skins bought at public auction in London held to be part of the dutiable value. These charges are a part of the cost of handling the skins and of classifying and assorting them so as to be put in proper condition for sale. Lot money and brokerage charges always accrue by this method of sale.—T. D. 13205 (G. A. 1626).

Costs of Weighing Wool, etc.—Charges incurred in weighing, portorage, labor of pressing canvas and hoops held to be dutiable charges.—T. D. 13194 (G. A. 1615).

Baskets for Liquor in Bottles.—Straw baskets holding bottles containing liquor held to be dutiable as manufactures of straw and not free as usual coverings.—T. D. 13077 (G. A. 1582).

Opera Glass Cases.—Leather cases for opera glasses are usual coverings.—T. D. 11213 (G. A. 572); T. D. 11241 (G. A. 600); T. D. 11412 (G. A. 695); T. D. 13073 (G. A. 1578).

Commissions, Brokerage, and Cartage.—Cartage to store, being the expense of hauling loose wool to store to be baled for transportation, from Aleppo, Turkey, is a dutiable charge.—T. D. 13072 (G. A. 1577).

Charges for Presspacking and Weighing Wool from Tientsin, at Shanghai.—Charges for presspacking and weighing wool at Shanghai, which was purchased at Tientsin, held to be dutiable charges.—T. D. 12974 (G. A. 1525).

Commission Added by Appraiser.—The appraiser noted on invoice "add to entered value the amount improperly deducted as commission 2½ per cent." The custom is to note on invoice "add to make market value," but there is no law requiring the use of this form.—T. D. 12639 (G. A. 1288).

Bamboo Baskets Containing Tea.—Bamboo baskets containing tea, the baskets having handles and adapted for use as lunch baskets and for other purposes, held not free as usual coverings.—T. D. 12564 (G. A. 1248).

Rugs from Peking via Shanghai.—Oriental rugs invoiced at Shanghai and authenticated there. The invoice covered charges at Peking for duty on freight to Tientsin and Shanghai, fire insurance, postage, petties, shipping off boat, commission; and at Shanghai packing, fire insurance, go-down, freight, consular fee, shipping off, postages, petties, bill brokerage, and commission. Held, that the Peking charges were part of the "cost, charges, and expenses incident

to placing the merchandise in condition for shipment" and were dutiable charges.—T. D. 12532 (G. A. 1216).

Bags Containing Donskoi Wool.—Donskoi wool of the third class invoiced in bales at a stated value per unit (Russian pood), gross weight. *Held*, that the cost of the bags or wrappers was properly included in the dutiable value (sec. 19, act of June 10, 1890) and that such value can not be reduced by deducting the weight of the bags from the gross weight.—T. D. 12522 (G. A. 1206).

Charges, Commissions, etc., not Separately Stated on Invoice.—Goods shipped from Apt, France, via Havre, invoiced at the former place at their respective prices per kilo, the sum total, including consular fee, being 4,272.30 francs. Following the footing is a statement of items of expense consisting of transportation to Havre 210 francs, commissions 6 per cent, 256.30 francs. The importer claimed that these items should have been deducted as nondutiable charges. *Held*, that the freight, etc., should have been separately stated on the invoice as charges to be added to and not deducted from the price and stated value of the goods per se; that it was impracticable for the appraiser to apportion the freight to the various kinds of goods; that the goods having been purchased from the manufacturers who made the invoice, they could not make a charge for commissions paid to themselves nor deduct the same from the value.—T. D. 12464 (G. A. 1202).

Commissions not Specified on Invoice.—Where an item does not appear on the invoice as commissions but as part of the actual price of the goods the importer can not deduct such item as commissions.—T. D. 12444 (G. A. 1182).

Act October 1, 1890—Charges on Goods Detained in Quarantine.—Vessel arrived within the district of New Orleans July 29, 1890, and was detained in quarantine five days, so that the goods were entered after the act of June 10, 1890, went into effect, and duties on charges were imposed under section 19 of that act. *Held*, that the State had the right to enact and enforce quarantine laws and this caused the detention and duties on charges were properly assessed.—T. D. 12377 (G. A. 1149).

Unusual Coverings—Tea Jars.—Decorated chinaware jars containing tea are not free as usual coverings.—T. D. 12368 (G. A. 1140).

Cost of Winding, Hanking, and Packing Worsted Yarn, held to be dutiable.—T. D. 12017 (G. A. 930).

Commissions, So-Called, Dutiable.—By the term "commissions" we are to understand a consideration bona fide paid or allowed for services of the person making the charge for it.

Deductions made from market value of the goods in favor of the manufacturer for the purchase of goods from himself are not commissions to be deducted.—T. D. 12008 (G. A. 921).

Fees for Legalization of invoices are not dutiable charges.—T. D. 12004 (G. A. 917).

Boxes Containing Collar Buttons.—Small metal boxes each containing one dozen bone collar buttons, held dutiable as manufactures of metal and not free as usual coverings.—T. D. 11994 (G. A. 907).

Fur Skins—Charges for Care of, etc., Not Commissions.—An item called commissions, but which was paid for taking care of fur skins while they were undergoing the process of dressing, dyeing, and finishing, is dutiable.—T. D. 11845 (G. A. 836).

Coverings for Musical Instruments.—Violin cases of wood held to be usual coverings.—T. D. 11392 (G. A. 675).

Specially Ordered Cases for Machinery.—It is immaterial whether the coverings were or were not necessary for the transportation of the merchandise to its destination or were put about the goods at the request of the importer or at the instance of the shipper. It is sufficient that they were used and arrived with the goods.—T. D. 11232 (G. A. 591).

Emballleur, Charges on Wool.—Emballleur, the expense of opening and closing each bale of wool for examination subsequent to purchase, is a dutiable charge.—T. D. 11226 (G. A. 585).

Silk Bags for Opera Glasses are usual coverings.—T. D. 11213 (G. A. 572).

Jugs Containing Mineral Waters.—Earthenware jugs containing natural mineral waters (free under paragraph 650, act of 1890) are usual coverings and are free.—T. D. 10861 (G. A. 356).

Stamp Tax on Cigars.—The stamp tax imposed on Havana cigars, which accrues immediately on the manufacture of the cigars and has to be paid before they can be offered for sale in the Habana market, is dutiable value.—T. D. 10783 (G. A. 336).

So-Called Transportation Charges.—Stockholm tar shipped from Stockholm to Hamburg, sold there and shipped to the United States. The price paid at Hamburg embraced the freight from Stockholm as shown on the invoice. *Held*, that this is not inland transportation abolished by the act of June 10, 1890, section 19.—T. D. 10470 (G. A. 120).

Coverings, Unusual.—Fancy boxes with hinges, covered with silk plush, the covers nickel plated and with a small mirror in the center of the top, are unusual coverings for linen handkerchiefs.—T. D. 10467 (G. A. 117).

Cost of Coverings, Etc.—Paper boxes containing fans, silk goods, etc.; paper boxes and folding tickets containing cotton laces; paper boxes and strings containing toys; boards, paper, strings, and tickets on dress goods; and charges for cutting out and ornamenting, in embroidered muslins, should be included as dutiable value.—T. D. 10398 (G. A. 89).

Violin Cases.—Paper violin cases invoiced separately from the violins, though packed together, are dutiable as paper boxes and are not subject to the additional duty of 100 per cent.—T. D. 10223 (G. A. 1).

Match Boxes.—Boxes containing safety matches and parlor matches, being of use in the bona fide transportation of the matches, are free, although the boxes are put to a use otherwise than in the transportation. T. D. 11862 (G. A. 853); T. D. 10333 (G. A. 54); and 18 op. Atty. Gen., 510, overruled.—*Rosenstein v. Magone*, 34 Fed. Rep., 120; *Magone v. Rosenstein*, 142 U. S., 604.

Tin Match Boxes containing high-grade matches and used to protect them from dampness and accidental ignition are usual coverings. T. D. 12567 (G. A. 1251) reversed.—T. D. 15463 (G. A. 2812); appeal by Slattery (C. C.), 59 Fed. Rep., 450.

Match Boxes of Paper or of wood and paper, with prepared surfaces upon which the matches are ignited, are usual coverings.—T. D. 12563 (G. A. 1247); T. D. 12567 (G. A. 1251); T. D. 15463 (G. A. 2812).

Wooden Boxes Containing Bottles.—Wooden deal boxes, with cardboard subdivisions, in which bitters bottles of opal glass were packed, being usual packages for such bottles, are not subject to additional duty as unusual coverings or as designed for any other use than in the bona fide transportation of said bottles to the United States.—T. D. 14851 (G. A. 2534); *U. S. v. Richards* (C. C.), 66 Fed. Rep., 730.

Wooden Boxes Containing Bottles.—Wooden deal boxes with cardboard subdivisions containing bitters bottles are usual coverings and are dutiable at the rate, if any, applicable to their contents.—T. D. 15957 (G. A. 2981).

Metal Boxes Containing Mourning Pins.—Brass boxes for mourning pins were assessed as manufactures of metal. *Held*, that the boxes, though costing more than the pins, are not unusual coverings and not therefore subject to additional duty.—*Dieckerhoff v. U. S.* (C. C.), 84 Fed. Rep., 443.

Metal boxes containing mourning pins are dutiable at the rate imposed on the pins, and not as manufactures of metal, and under section 19, act of June 10, 1890, as unusual coverings.—T. D. 15860 (G. A. 2960); reversing T. D. 12114 (G. A. 976).

German Export Duty.—The "German duty," which is a tax imposed by the German Government on merchandise when sold by manufacturers for consumption or sale in the markets of Germany, but is remitted by that Government when the goods are purchased in bond or consigned while in bond for exportation to a foreign country, was lawfully included by the appraiser in his estimate of the dutiable value of the importation in question in this case.

By the laws of this country the assessment of duty proceeds upon the market value in the exporting country and not upon the market value less such remission or amelioration as that country chooses to allow in accordance with its own views of public policy.

The use of the word "bonification" does not change the character of the German export duty. It is a special advantage extended by the German Government in aid of manufacture and trade, having the same effect as a bonus or drawback.—*U. S. v. Passavant*, 169 U. S., 16; (G. A. 1602) T. D. 13181 reversed.

Needles in Ornamental Cases.—Coverings or cases made of silk, leather, or paper, and containing needles, such cases being ornamental articles, arranged as permanent receptacles for the needles, the needles being free under paragraph 656, act of 1890, are dutiable as manufactures of silk, of paper, or of leather, according to the component material of chief value, and are not free as usual coverings. Reversing the circuit court. *Matthews v. U. S.*, (72 Fed. Rep., 43).—*U. S. v. Matthews* (C. C. A.), 78 Fed. Rep., 345.

Apportionment of Charges on Hosiery.—In apportioning the cost of the outside cases containing merchandise of different kinds, that method must be adopted that seems most equitable and just, and it would appear that in making such apportionment of the charges for cases containing hosiery of different values it should proceed according to the number of dozen of each kind and not according to the value.—*Rice v. U. S.*, 123 Fed. Rep., 195; (G. A. 525) T. D. 11082 reversed.

Burlap Sacks Containing Oats.—Oats were imported in sacks made of burlap. *Held*, that in determining the value of an article purchased abroad in the usual coverings, such as oats in bags, this section requires that the value of the article as a whole, including the coverings, shall be taken, though the covering if separately imported would be free. Sustaining the collector and reversing the Board of General Appraisers.—*U. S. v. Wood*, 85 Fed. Rep., 212.

Glass Bottles Containing Merchandise Subject to Ad Valorem Duties are not ejusdem generis with "cartons, cases, crates, coverings of any kind," and do not come within the operation of this section. Such bottles are not "coverings" in the ordinary sense of the word and are specially provided for in the tariff acts.—*U. S. v. Austin*, 186 U. S., 298.

Glass Jars Containing Preserves and holding 1 pint or less are not vials under paragraph 88, act of 1894, but are dutiable as part of the market value of the merchandise contained in them.—*Smith v. U. S. (C. C.)*, 91 Fed. Rep., 757.

Glass Jars for Roquefort Cheese.—Small glass jars without necks, having straight inside walls and metal tops, are not unusual coverings for Roquefort cheese within the meaning of this paragraph; nor can they be classified as bottles or bottle glassware. Sustaining the circuit court.—*U. S. v. Leggett*, 66 Fed. Rep., 300.

DECISIONS UNDER THE ACT OF 1883.

Coverings (Leather) for Watches (Act of 1883).—Leather cases containing watches held to be usual coverings.—*T. D. 13171 (G. A. 1592)*.

Boxes and Cases Containing Dominoes, Telescopes, Opera Glasses, and Barometers.—Cases for opera glasses held to be usual coverings.—*T. D. 11871 (G. A. 862)*.

Boxes containing dominoes held to be usual coverings.

Cases for barometers held to be usual coverings.—*T. D. 10325 (G. A. 46)*.

Coverings for telescopes held to be usual coverings.—*T. D. 10325 (G. A. 46)*; *T. D. 11868 (G. A. 859)*.

Charges for "Finishing and Adornment" of cotton embroideries held dutiable.—*T. D. 10680 (G. A. 264)*.

Leather Cases Containing Combs are dutiable as coverings for use other than in the transportation of goods, at 100 per cent, and not at the rate for the combs.

If coverings are dutiable at all, they are dutiable at 100 per cent, without regard to the rate levied on the goods.—*T. D. 10574 (G. A. 224)*.

Violin Cases worth from \$17 to \$22 each are prima facie extraordinary and unusual coverings.—*T. D. 10488 (G. A. 138)*.

Cutting Into Lengths of Woolen Cloths.—The cost of cutting cloth into lengths of 10, 15, and 20 yards is a proper element of dutiable value.—*T. D. 10481 (G. A. 131)*.

Confectionery Boxes of bright metal about 1½ inches long, three-fourths of an inch wide, and three-eighths of an inch deep, with sliding top, the boxes equaling or exceeding the contents in value, are dutiable as unusual coverings.—*T. D. 12320 (G. A. 1092)*.

Pipe Cases.—Cases containing pipes held to be usual coverings.—*T. D. 10248 (G. A. 26)*.

DECISIONS UNDER EARLIER STATUTES PERTAINING TO SAME SUBJECT MATTER.

Appraisement.—Prior to March 3, 1883, a collector of customs was required by law to ascertain the dutiable value of imported goods by adding to their cost at the place of production the cost of transporting them to the place of shipment to the United States and of the box or case in which they were shipped. This aggregate was called their price or value "free on board," which, in the absence of fraud, was taken to be their dutiable value. The act of March 3, 1883, repealed this provision. Shortly after this section took effect, and in ignorance of its passage, a shipment of goods produced in Switzerland was made at Antwerp, the consular invoice of which contained in detail the original cost of the goods in Switzerland, the cost of transportation separately

stated, and the aggregate "free on board at Antwerp." On their arrival at the port of New York the consignee cabled for a new invoice to conform to the changed law. One was sent, but without a consular certificate. The consignee presented both invoices at the customhouse and asked to use the second as explanatory of the first and to enter the goods at their net value, charges off. The return of the weigher showed a less quantity of goods than that stated in the invoice. The customhouse officers required the importer to enter the goods at their dutiable value according to the first invoice and gave him to understand that that was all he could do. The collector decided, and the Secretary confirmed the decision, that the cost of transportation, etc., was not to be deducted from the dutiable value of the goods and that the duties were to be collected on the quantity as shown by the invoice. *Held*, (1) that the levy after March 3, 1883, on a valuation including the cost of transportation from the place of production to the place of shipment was contrary to law; (2) that under the circumstances the importer was not bound to ask for an appraisement under R. S. 2926; (3) that the collector was not entitled to exact a duty upon a deficiency in weight arising from loss of goods and not from shrinkage; (4) that the payment of duties under these circumstances was not voluntary.

This section took effect immediately upon the passage of the act.—*Robertson v. Bradbury*, 132 U. S., 491.

Appraisement of Containers.—The weight of boxes, cases, or packages in which goods are imported is not the subject of appraisement within the meaning of section 8, act of 1846.—*Wilson v. Maxwell*, 2 Blatchf., 316; 30 Fed. Cas., 147.

Appraisement of Wool.—It will be presumed in the absence of testimony that when an importation of wool was appraised at its invoice value such appraisement did not include the charges on the wool at the port of exportation when the invoice contained the amount and cost of the wool separate from such charges.—*Saxonville Mills v. Russell*, 1 Fed. Rep., 118.

Under the act of 1832 the charges and expenses at the place of exportation, which, by section 15, in computation of ad valorem rates of duty form no part of the actual value, are not to be taken in determining the value of wool with the view of ascertaining whether it is dutiable.—*Armstrong v. Hoyt*, 5 Hunt Mer. Mag., 76; 1 Fed. Cas., 1142.

Barrels Containing Portland Cement.—This section not only repeals R. S. 2907, but positively prohibits the value of the coverings from being estimated as part of the dutiable value, and therefore the value of barrels in which Portland cement is imported can not be added to the wholesale price of the latter as an element of its dutiable value.—*Meyers v. Shurtleff*, 23 Fed. Rep., 577.

Boxes Containing Picture Blocks.—Cubical blocks capable of being arranged in a series of pictures were imported in a box which contained pictures from which the pictures into which the blocks were arranged, and a similar picture was on the top of the lid. Testimony was given that the picture was placed on the lid to save varnishing it. *Held*, that as the picture alone is used, and it differs in its use in no wise from the pictures contained in the box, the importer is not liable to 100 per cent.

The purpose of this section was to relieve importers from the payment of duty upon the genuine means of preservation of merchandise in course of transportation by removing the duty upon the box, wrappings, or coverings that were usual or necessary in inclosing, protecting, and carrying the goods and imposing a duty amounting to a penalty on packages which were intended for subsequent use.—*Winters v. Cadwalader* (C. C.), 42 Fed. Rep., 405.

Charges for Ticketing, Taping, and Tying.—Increasing the valuation made by appraisers to cover the expense of ticketing, taping, or tying up pieces of cloth of the length ordered and placing them ready for shipment is in violation of this section, which repeals preexisting laws upon the subject and provides that certain charges theretofore entering into the computation of value could no longer be considered. Sustaining the circuit court.—*Magone v. Origet* (C. C.), 70 Fed. Rep., 778.

China Separately Boxed.—Cheap cups and saucers were imported in paper boxes closed by brass clasps, each box containing only a single pair, wrapped in tissue paper (entered as decorated china under paragraph 125). *Held*, that if said coverings were intended for use only in transportation and for no other use, and were not intended to enhance the value, increase the sale, or facilitate the selling, they were free; otherwise they were dutiable.—*Meyer v. Cooper* (C. C.), 44 Fed. Rep., 55.

Commissions.

The rate of commissions must be ascertained in the same manner as the value of the goods, and a collector has no authority, even under instructions from the Treasury Department, to charge an arbitrary rate of commissions (under act of 1842).—*Munsell v. Maxwell*, 3 Blatchf., 364; 17 Fed. Cas., 999.

In determining the dutiable market value of imported merchandise it is within the authority of the designated officers to inquire into the origin of the disputed items claimed to be commissions and charges and to ascertain whether they are truly such or part of the wholesale price which the importers paid for the merchandise.

It appearing that certain wool purchased from M. & Son, of Glasgow, for importation by K. & Bro. had previously been sold by other persons to M. & Son and a commission paid by M. & Son upon their purchase, that the price paid by K. & Bro. included said commission, and that they also paid their brokers a commission on their purchase of the wool, the customs officials in determining the dutiable market value of the wool refused to treat the commissions paid by M. & Son in the prior and independent transaction as a "charge" within the meaning of this section and took into consideration the fact that that commission was a part of the price paid for the wool. *Held*, that in the absence of fraud their decision and valuation was final and conclusive. 59 Fed. Rep., 570, reversed.

Upon the facts so found the commission paid by M. & Son on their prior purchase was not a "charge" to be excluded in ascertaining value.—*U. S. v. Kenworthy* (C. C. A.), 68 Fed. Rep., 904.

By a proper construction of section 17 of the act of August 30, 1842 (5 Stat., 548), and the act of March 3, 1851, a commission should in all cases be added to the invoice value, although in fact no commission was paid and although it is not customary for importers of the article in question to pay any commission.

Where the rate of commission added by the collector is that prescribed by the Secretary as the usual one, it is incumbent upon the merchant to show that it is higher than the rate usually paid when any commission is paid.—*Norcross v. Greeley*, 1 Curt., 114; 15 Law Rep., 149; 29 Hunt Mer. Mag., 203; 18 Fed. Cas., 301.

DISCOUNT—EXPORT DUTY.—Where the usual charges for commissions on goods purchased in China was 2 per cent, it was erroneous for the customhouse to increase the charges for commissions.

The market value at the port of exportation is (in 1859) to be taken as the price of the goods, and where a purchaser has had a discount allowed him on

his purchase he is not entitled to have such discount deducted from the invoice value.

Where the appraisers did not raise the invoice value, but added thereto an arbitrary and fictitious charge for export duty at the port of exportation, such addition was erroneous.—*Riess v. Redfield*, 4 Blatchf., 381; 18 How. Prac., 87; 20 Fed. Cas., 774.

TRANSPORTATION CHARGES.—A charge of commissions "at the usual rate" forms part of the dutiable value. This charge must be made whether the importer has paid any commissions or not, and a charge for commissions at a rate higher than the usual rate can not be made even though the importer has paid a higher rate.

There is nothing in the act of March 3, 1851 (9 Stat., 629), which justifies a collector in requiring an importer to add to his invoice, as forming part of the dutiable value, charges for inland or coastwise transportation, whether by land or water, from the place of its production or manufacture to another place, before it leaves its foreign port of shipment for the United States.

A charge for "costs and charges" must include those actually paid and nothing more, and it is not lawful to insert an arbitrary estimate.

Under the act of March 3, 1857, section 5, it is not necessary that the importer should appeal from the decision of the collector requiring the addition to the invoice of illegal charges for inland freight and commissions and costs and charges in order to prevent such decision from being final.—*Hutton v. Schell*, 6 Blatchf., 48; 7 Int. Rev. Rec., 84; 12 Fed. Cas., 1095.

SPECIAL DISCOUNT.—The evidence showed that the manufacturers were accustomed to sell in a foreign market to others than commission men at a fixed price, including in the price an item which they called commission. The item so charged was the discount which the manufacturers were accustomed to allow commission merchants who purchased direct from them. There was evidence that in buying goods from a concern which was a manufacturer and also a commission house the price of the goods purchased of them was the same as for those of their own manufacture and for similar goods manufactured by others which they were selling on commission. *Held*, that the customhouse officers in appraising the goods should properly include as a part of the actual manufacturing price the entire sum paid by the importers to the commission men or the manufacturers, no part of which was properly chargeable as commission. 84 Fed. Rep., 151, reversed.—*U. S. v. Herrman* (C. C. A.), 91 Fed. Rep., 116.

FREIGHT CHARGES.—Commissions on importations from continental Europe can not be charged for in excess of 2 per cent, except that commissions on importations from Paris may be charged at the rate of 3 per cent.

Freight and transportation from the port of shipment is not a dutiable charge under the act of 1857.—*Benkard v. Schell*, 5 Int. Rev. Rec., 3; 3 Fed. Cas., 192.

Containers for Merchandise Paying Specific Duties.—The charge of a specific duty upon an article in a particular form or vessel is a charge upon the whole article, as described, including the vessel or material described as containing it.—*Karthaus v. Frick*, Taney, 94; 14 Fed. Cas., 136.

Containers for Molasses.—The act of May 29, 1830 (4 Stat., 49), fixed the duty on molasses at 5 cents a gallon. Section 7 of the act of July 14, 1832 (4 Stat., 583, 591), directed that goods should be appraised at their actual value at the time of purchase and place of exportation. The compromise act of March 2, 1833 (4 Stat., 635), directed that in all cases where duties imposed on foreign imports should exceed 20 per cent on the value thereof one-tenth of

such excess should be deducted biennially. Molasses having been imported under these acts the collector fixed the duty as follows:

Duty on 36,031 gallons at 5 cents per gallon.....	\$1, 801. 55
Value including packages, etc.....	\$6, 309. 00
20 per cent thereon.....	932. 76
Excess at 5 cents per gallon.....	539. 75
Deduct four-tenths of this excess.....	215. 90

Net duty..... 1, 585. 65

The importer's method of calculation was as follows:

Duty on 36,031 gallons at 5 cents per gallon.....	\$1, 801. 55
Value excluding packages, etc.....	\$4, 663. 82
20 per cent thereon.....	932. 76
Excess at 5 cents per gallon.....	868. 79
Deduct four-tenths of this excess.....	347. 51

Net duty..... 1, 454. 04

Held, that the cost of the packages in which the molasses was contained formed a proper item of its value on which to calculate the 20 per cent.

But if, in addition to including the value of the packages in that of the molasses, a separate duty had been charged on them it would have been wrongly imposed.—*U. S. v. Clement, Crabbe*, 499; 25 Fed. Cas., 461.

Cost of Cartons and Packing.—Vegetable buttons imported in 1884. Goods seized for undervaluation (*R. S.* 2839), in that the cost of the cartons and packing were not added. Claimant applied for release under *R. S.* 3081. Goods appraised, the appraised value paid, and the goods released. The Supreme Court in *Oberteuffer v. Robertson* (116 *U. S.*, 499) decided that the cost or value of cartons and packing are not dutiable items under the act of 1883. *Held*, that this was clearly a voluntary settlement and compromise, with full knowledge of all the facts of the matters at issue between the parties, whether they were in accordance with statute provisions on the subject, and is binding alike on the claimant and the defendants. Money so paid can not be recovered back.—*Shantz v. U. S.*, 23 *C. Cls. R.*, 384, 398.

Cost of Dyeing, Dressing, and Packing Fur Skins.—The agent of the importer bought at auction sealskins "undressed" or "in salt." He then dyed, dressed, "machined," insured, packed, and shipped them. The cost to the importer was the price paid for the green goods at auction, the auctioneer's commissions, the cost of dressing, dyeing, machining, fire insurance during the process of dressing, interest on the money advanced by the agent, his commissions, and the cost of packing. *Held*, that the brokerage, commissions, and packing are not dutiable value.—*Glanz v. Spalding*, 24 *Fed Rep.*, 20.

Coverings for Firearms Not Dutiable.—Firearms, caps, and wads were incased in boxes and coverings which were the usual and necessary coverings for them for transportation. The value of the boxes and coverings was included in the invoice value of the goods, and at the time of the entry the importer wrote on the invoice the separate value of the boxes and coverings. *Held*, that duty can not be exacted on the entire invoice value, but must be charged upon the entire invoice less the value of the boxes, coverings, etc.—*Tryon v. Hartranft*, 31 *Fed. Rep.*, 443.

Disallowance of Charges to Make Market Value.—Since this act duties can be exacted only upon an appraisement of the market value of the goods per se. Where on the invoice the gross value of the goods is stated, and a deduction made of specific packing charges, and the net amount is then carried

out as the market value of the goods per se, an appraisement which simply disallows the charges and adds them again to make dutiable value, or states that they are to be added to the market value, is not an appraisement of the goods per se, but an addition of charges, and does not justify the collector in exacting duty on the value of the goods increased by the amount of such charges.—*Morris v. Cadwalader*, 33 Fed. Rep., 243.

Discount.—An invoice of Irish linens (1853) as entered carried out the prices in gross, with a credit underwritten, "Deduct discount allowed for cash, 7½ per cent." The invoice, with the allowance of such discount, gave the true market value of the linens. The appraisers found the invoice to be correct as made out and did not appraise the lines according to their judgment, but, in obedience to circular instructions from the Secretary of October 29, 1847, and August 7, 1848, valued them at the invoice price less a discount of 2½ per cent, and duties were exacted on the remaining 5 per cent. The usage of the trade was to make up invoice prices of linens at nominal prices and reduce those to the true market value by discounts and rebatements. *Held*, that under the usage proved the sum to which an invoice was reduced by the rebatement, and not its gross sum, must be regarded as representing the real invoice price.

The Secretary had no legal power to direct the judgment of the appraisers in valuing goods or adding to or subtracting from the charges in the invoices for the purpose of determining market value, and the increase of the invoice in the manner in which it was done was without authority of law.—*Gray v. Lawrence*, 3 Blatchf., 117; 10 Fed. Cas., 1031.

The plaintiff below entered an importation of goods upon the following invoice:

	Francs.
Bought	8,670.75
Discount for cash on gross amount 2 per cent, 8,760.60	175.30
	8,494.45

Terms cash; if not paid, interest to be added at the rate of 6 per cent. As cash had not been paid, the 2 per cent discount was disallowed by the appraisers. The collector thereupon fixed the value of the goods as of the invoice price of 8,670.75 francs and exacted duty thereon, although the actual market value of the goods in the country of exportation was 8,494.95 francs. *Held*, that the latter sum was also the invoice value and that the duty on the 2 per cent was improperly exacted.—*Arthur v. Goddard*, 96 U. S., 145.

Dutiable Value of Ad Valorem Goods.—In calculating the duties under section 4, act of April 20, 1818, on ad valorem goods, the actual cost is to be taken, including all charges except commissions, outside packages, and insurance.

If the importer actually pays commissions, the charge is excepted.

Nor is it any objection that an agent of the importer makes him debtor for the goods in the invoice as bought of the agent if in fact he has acted only as agent for the owner in the purchase.—*U. S. v. May*, 3 Mason, 98; 26 Fed. Cas., 1224.

Export Duty on Molasses.—Where the question was of the appraisement of concentrated molasses, the appraisers were right in assessing it at its market value where produced, as affected by an export duty, whether that duty was paid in this case or not.—*Belcher v. Linn*, 24 How., 508.

Inclusion of Charges in Dutiable Value.—The effect of this section was to exclude from the estimate of the amount of duties collectible upon imported goods the "charges" specified in R. S. 2907 and 2908, including the value of the usual and necessary sacks, crates, boxes, or coverings of any kind not com-

posed of materials or made in any form designed to evade duties thereon, but used in the bona fide transportation of such goods to the United States. The duties, therefore, for which plaintiffs were liable in respect to the oranges they imported were to be ascertained with reference only to their true and actual market value. That the collector made a reduction of the invoice value of the charges is of no consequence, because such charges were not dutiable items. He did what the law did not authorize him to do, namely, increased the dutiable value of the oranges, although they were invoiced and entered at their true and market value.—*Badger v. Cusimano*, 130 U. S., 39, 41.

Under this section the appraiser is forbidden to add the value of the usual or necessary boxes or coverings in fixing the value of the goods, provided such boxes or coverings are only designed for use in the transportation of goods to the United States. If the value of the boxes be added without finding other design, the appraisement and the liquidation based upon it will be void, and that defense will be available to the importer. "Use in the transportation to the United States" includes transportation to the consumer so long as the boxes are not broken. But the appraiser is authorized to inquire into the design of the boxes or coverings, and if he finds them designed for other than transportation uses, his findings and the liquidation based upon it can not be reviewed in a suit to enforce the payment of the duties, but only in a suit by the importer against the collector to recover duties paid.

In no case is the value of the covering to be added to the value of the goods. If dutiable at all, the covering is dutiable at 100 per cent, without regard to the rate of duty on the goods.—*U. S. v. Thurber*, 28 Fed. Rep., 56.

Inland Transportation Charges.—Blankets were purchased at Leeds for less than 75 cents each, sent to Liverpool, and exported to the United States. The charges for transporting them to Liverpool, added to the original price, would make the cost at the place of shipment greater than 75 cents each. *Held*, that, under act of July 14, 1832 (4 Stat., 583), section 2, clause 2, the cost of transportation to Liverpool must be taken into account in estimating the value, and that the blankets are dutiable at 5 per cent.—*Hoffman v. Williams*, Taney, 69; 12 Fed. Cas., 306.

When the railroad company hauled the property to its station free of charge, no forfeiture ensued for not adding (under R. S. 2907) the expense usually incurred for that service.—*U. S. v. 2,117 bushels of malt*, 8 Fed. Rep., 224.

Internal transportation charges for getting the goods from the place of manufacture to the place of shipment, even if not dutiable elements of market value, become a part of the entered value when they are included in the entry as a part of the market value, because that is thought to be the best way, without indicating that such inclusion was objected to. In such case the charges form an indisputable part of the entered value, which the collector can not reduce.—*Vantine v. U. S. (C. C.)*, 91 Fed. Rep., 519.

Expenses of transportation from Paris to Havre to get the merchandise on shipboard are (in 1855) dutiable charges.

Whether the commission, which is to be added as a dutiable charge, is to be cast on the foot of the invoice, with or without the addition of the charges, depends on usage and is not fixed by law.—*Warren v. Peaslee*, 2 Curt., 231; 29 Fed. Cas., 280.

Lemons Bought in Bulk and Wrapped Separately for Preservation.—Lemons and oranges were bought in bulk in Sicily at certain rates per thousand and afterwards wrapped one by one and packed in boxes furnished by the purchaser. Under this act the dutiable value of imported merchandise is the actual market value or wholesale price at the port of exportation in the prin-

cipal markets of the country from which the same was exported, without any addition for commissions, brokerage, costs of transportation, or other like costs in placing the goods on shipboard.

Where goods are purchased in bulk and subsequently put into packages, boxes, or coverings by the buyer for convenience of preservation, a market value does not include such packing.—*Cobb v. Hamlin*, 3 Cliff., 191; 8 Int. Rev. Rec., 121; 5 Fed. Cas., 1128.

Market Value.

The actual market value or wholesale price of the merchandise subject to ad valorem duty, or where the duty was based upon or regulated by the value of the square yard or of any specific quantity of the same, was required to be ascertained as it was in the principal markets of the country from which it was imported and at the time it was purchased, and that there should be added thereto, as the true value upon which the duties should be assessed, all costs and charges except insurance, but including a charge for commissions.

The same provision was incorporated in the act of March 3, 1851, except that the actual market value or wholesale price of the merchandise under the latter act was to be ascertained at the period and place of exportation.

Where wool was baled up before it was purchased the words "market value" in the act of 1842 include the cost of coverings as well as the goods.

Where the price paid for the merchandise included the box, package, or covering, the appraisers ascertain the actual market value or wholesale price of the merchandise, in the condition as purchased at the time, in the principal markets of the country from which the same was imported. Charges for baling or covering in such cases are not added, because they are included in the purchase as part of the merchandise.

Under the act of March 3, 1851, where the liability of the merchandise to duty depends upon the value of a given quantity or parcel of the same, there is no necessity for a preliminary appraisement in order to ascertain whether it is subject to duty at all or entitled to free entry before it is appraised as required by law to ascertain its dutiable value.—*Harding v. Whitney*, 4 Cliff., 96; 11 Int. Rev. Rec., 103; 11 Fed. Cas., 496.

LOSS BY LEAKAGE.—The effect of the act of 1842, section 16, was, wherever an ad valorem duty was imposed, to charge it only upon the amount of merchandise actually imported:

In the absence of any official appraisement of the amount and value of the deficiency, the only rule of abatement approximating to exact justice would seem to be to estimate the dutiable value of the articles (sugar and molasses) lost by leakage in the same manner and upon the same principles that the dutiable value of the amount mentioned in the invoice is ascertained and to reduce the assessment accordingly, the amount of the deficiency being ascertained from the returns of the weigher and gauger.

A pro rata abatement is to be made also upon the amount of the incidental charges at the port of shipment, such as commissions, etc., and upon the value of the hogsheads in which the sugar and molasses are shipped (all of which enter into the amount upon which duties are to be assessed).

The mere report of the discharging inspector is not enough to establish a shortage of imported merchandise, not corroborated by the oath of the importer denying that he received the alleged missing goods, or other satisfactory evidence. The burden of proof is on an importer to show that an alleged loss of goods occurred while in transit to the United States and before importation. Where the evidence fails to show this satisfactorily, relief from payment of duties can not be granted.—*Brune v. Marriott*, Taney, 132; 4 Fed. Cas., 475.

Recovery of Duties Paid on Nondutiable Charges.—The plaintiff is not entitled to recover the duty levied on charges *fraies jusqu'à bord* (charges and commissions to the merchant who received the merchandise at Havre and put it on board ship).—*Bartels v. Schell*, 16 Fed. Rep., 336, 341.

Rice Ground Before Shipment.—Where an importer has caused rice to be ground before shipment into granules of sufficient fineness to entitle it under the rulings of the Treasury Department to be entered at a lower rate of duty than unground rice, the cost of granulation forms part of the dutiable value of the article and can not be deducted by the importer.—*Bullock v. Magone* (C. C.), 39 Fed. Rep., 191.

Sacks Containing Salt.—The expense of sacks in which salt is packed for importation from Liverpool is embraced under the words "all costs" and is to be added to the market value to ascertain dutiable value.—*Barnard et al. v. Morton*, 1 Curt., 404; 2 Fed. Cas., 837.

Skeining of Yarns.—Under this section (referring to R. S. 2907) if skeining worsted or mohair yarns is necessary to make them merchantable yarns the cost of skeining is a part of the value of the goods and subject to duty. If skeining is necessary only for convenience in transportation from the producer to the consumer, it is a charge for putting up, preparing, and packing for shipment, and the extra cost of skeining is not to be added to the other cost in computing the duty.—*Stephenson v. Cooper* (C. C.), 44 Fed. Rep., 53.

Tin Boxes Containing Biscuit.—The customary packages in which biscuit were imported were in tin boxes on which it was not unusual to employ more or less ornamentation. The testimony was that crackers in ornamental boxes sold for more than those in plain. *Held*, that if ornamental boxes enhanced the value and increased the facilities for the sale of the crackers contained therein, then they had a use independent of their employment in the importation of merchandise and were dutiable at 100 per cent.—*Martindale v. Cadwalader* (C. C.), 42 Fed. Rep., 403.

Tin Cans Containing Lobsters.—Tin cans containing lobsters imported from Prince Edward Island and from Halifax, Nova Scotia, are subject to duty under the act of February 8, 1875, section 4, clause 6 (18 Stat., 307). Section 7 of the act of 1883 has no reference to the special duty imposed upon tin cans containing fish.—*Russell v. Worthington*, 23 Fed. Rep., 248.

Transportation Charges.—Under R. S. 2907 and the act of June 22, 1874, section 14 (18 Stat., 186, 189), as construed by the Treasury Department for many years without any attempt to change it or until now to question its correctness, goods imported into the United States from one country, which in transportation to the port of shipment pass through another country, are not subject to have transportation charges in passing through that other country added to their original cost in order to determine their dutiable value.—*Robertson v. Downing*, 127 U. S., 607.

Transportation Charges—Transshipment.—Where silks were shipped from China to New York by way of London, *held* that the value of the silks in the country of production, with the expenses of charges, commissions, etc., which accrued prior to their being put on shipboard at the place of exportation, constituted their dutiable value, and that the expense and freight of conveying the goods from China to London formed no part of such value.—*Griswold v. Maxwell*, 3 Blatchf., 145; 11 Fed. Cas., 67.

The plaintiff entered into a contract with T. & Co. for the transportation of iron from Wales to the United States, in pursuance of which contract T. & Co. employed coasting vessels to bring it from Wales to Liverpool, where it was

transshipped on board their packets to Boston. *Held*, that the cost of transportation from Wales to Liverpool is not a dutiable charge which can be added to the market price.—*Forman v. Peaslee*, 21 Law Rep., 273; 9 Fed. Cas., 452.

Additions to the market value of railroad iron of freight and transportation charges from Wales to London to Liverpool are illegal where it appears that the Welsh sales are free on board.

Sea freight is not a dutiable charge.—*Bliss v. Redfield*; *Same v. Schell*; *Crook v. Bronson*; *Same v. Redfield*, 17 Leg. Int., 373; 3 Fed. Cas., 714.

Where merchandise was shipped from Canton to the United States via Manila, where it was to be and was transhipped and a separate freight paid to Manila, the charge for freight could not be added to the market value at Canton as one of the dutiable charges, but all charges incurred at Manila (portorage, coolie hire, duties paid to the customhouse, and commissions to Manila forwarding agents) should be added as dutiable charges.—*Millar v. Millar*, 2 Curt., 256; 17 Fed. Cas., 289.

Where merchandise was shipped from Smyrna to the United States via Liverpool, where it was to be and was transferred to another vessel, it was held that an estimated freight from Smyrna to Liverpool could not be added to the market value and charges at Smyrna to make up the dutiable value under the act of March 3, 1851. In such a case Smyrna and not Liverpool is the place from whence the merchandise is imported into the United States.—*Gant v. Peaslee*, 2 Curt., 250; 9 Fed. Cas., 1143.

Sugars transported from Cuba to Halifax and then imported. *Held*, that under the act of 1842 the duties were to be assessed upon the market value of the sugars in Cuba at the time they were shipped from Halifax, with the addition of the usual charges at Halifax. Freight from Cuba to Halifax is not to be added.—*Barnard v. Morton*, 1 Spr., 186; 2 Fed. Cas., 840.

A cargo of goods was shipped from Canton to London, thence to New York. The freight from Canton to London was added as part of the dutiable value. *Held*, that this charge was not authorized.—*Grinnell v. Lawrence*, 1 Blatchf., 346; 19 Hunt. Mer. Mag., 533; 11 Fed. Cas., 54.

Where wool the growth and product of Buenos Aires was purchased there for transportation to New York, but on account of the blockade of Buenos Aires was transported in lighters to Montevideo and shipped thence to New York, *Held*, that the costs and charges of such transportation from Buenos Aires to Montevideo could not be added as a part of the dutiable value of the goods.—*Wilbur v. Lawrence*, 2 Blatchf., 314; 29 Fed. Cas., 1188.

Usual Coverings Are Not Dutiable.—Under this act the value of the paper cartons or boxes in which hoisery and gloves are packed in Germany, and the cost or value of the packing of the goods in cartons and of the cartons in an outer case, are not dutiable items, either by themselves or as part of the market value of the goods, unless the cartons are of a material or form designed to evade duties thereon or are designed for use other than in the bona fide transportation of the goods to the United States.

Where the cartons are of the usual kind known to the trade before the act of 1883 as customarily used for covering and transporting goods, and are intended to accompany them and remain with them in the hands of the retail dealer until the goods are sold to the customer, they are designed for use in the bona fide transportation of goods to the United States within the meaning of this act, and their cost or value is not dutiable.—*Oberteuffer v. Robertson*, 116 U. S., 499.

1913 S. Any merchandise deposited in any public or private bonded warehouse may be withdrawn for consumption within three years from the date of original importation, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal: *Provided*, That nothing herein shall affect or impair existing provisions of law in regard to the disposal of perishable or explosive articles.

SEC. 28.

1909 Subsec. 19: Any merchandise deposited in any public or private bonded warehouse may be withdrawn for consumption within three years from the date of original importation, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal: *Provided*, That nothing herein shall affect or impair existing provisions of law in regard to the disposal of perishable or explosive articles.

1890 SEC. 20 [as amended by the acts of Oct. 1, 1890, 26 Stat., 567, and Dec. 15, 1902, 32 Stat., 753]. Any merchandise deposited in bond in any public or private bonded warehouse may be withdrawn for consumption within three years from the date of original importation, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal: *Provided*, That the same rate of duty shall be collected thereon as may be imposed by law upon like articles of merchandise imported at the time of the withdrawal: *And provided further*, That nothing herein shall affect or impair existing provisions of law in regard to the disposal of perishable or explosive articles.

DECISIONS UNDER THE ACT OF 1909.

Warehoused Goods—Seizure—Liquidated Duties.—Certain straw hats were imported during the tariff act of 1909, and while in warehouse under bonds they were seized by Government officials for alleged fraud. Forfeiture proceedings were thereafter instituted by the Government and subsequently dismissed on the importers agreeing to pay the "liquidated duties," together with certain penalties. *Held*, that the "liquidated duties" are the duties which accrued at the time the goods were delivered by the Government into the possession of the importers. *Hartranft v. Oliver* (125 U. S., 525) cited.

During the pendency of forfeiture proceedings for alleged fraud in connection with importations of certain straw hats, which had been seized by the Government while the hats were in warehouse under bonds, the three-years' time limit fixed in the bonds by virtue of section 2971 of the Revised Statutes expired. *Held*, that the terms of the bonds were suspended while the forfeiture proceedings were pending by reason of the Government's custody and control of the goods.—T. D. 35530 (G. A. 7730).

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Warehouse Goods—Reimportation.—The protest relates to 8 bales of leaf tobacco which had been imported at New York on December 30, 1907, and later rewarehoused in Chicago. On December 23, 1910, a rewarehousing withdrawal entry for transportation and exportation in bond was made covering the tobacco in question, and the tobacco was exported to Canada. It was later reimported from Canada, and arrived at Chicago January 5, 1911. The collector reports that he thereupon assessed the same duty thereon as had been assessed at the port of New York in December, 1907, less the duty on 6 pounds of samples which had been duty paid at Chicago.

From the testimony it is undisputed that the object of the withdrawal of the merchandise from bond, its exportation to Canada, and its reimportation into the United States was simply to secure an extension of the three years' time allowed by section 2971 of the Revised Statutes.

The board in the case of American Mica Co., G. A. 7139 (T. D. 31143), held that certain mica subject to an ad valorem rate of duty, and which had been withdrawn from bond, exported and reimported for a similar purpose as in this case, was properly assessed for duty on the appraised value at the time of its original entry.

On authority of said board decision and the cases therein cited, we overrule the protest and affirm the decision of the collector.—Ab. 38787.

The withdrawal of merchandise from bonded warehouse and shipment of same abroad with the intention of bringing back and reentering it in bond, thus to secure an extension of the three years' time allowed by section 2971, Revised Statutes, for deposits in such warehouse, is not a bona fide exportation; nor is the bringing back of such merchandise a bona fide importation.

Merchandise withdrawn from bonded warehouse and shipped abroad with the intention of bringing back and reentering it in bond should not be appraised on reimportation, but is subject to duty on the basis of its value at the time of the original importation.—T. D. 31143 (G. A. 7139).

No Right to Reappraisal Given by This Section.—Where certain merchandise was imported, entered, and appraised under the tariff act of 1897, and having been placed in bonded warehouse was withdrawn from bond after the tariff act of 1909 went into effect, no new or second appraisement of such merchandise can be demanded by the importer.

The right conferred by subsection 7 of section 28, tariff act of 1909, authorizing the importer to deduct from the invoice value to make market value, must be exercised at the time of entry and before appraisement of the goods, and not afterwards. Such deduction is properly refused by the collector of customs if demanded after entry of the goods.

Subsection 19 of section 28, tariff act of 1909, providing for the withdrawal of merchandise in bonded warehouse "on payment of the duties and charges to which it may be subject at the time of withdrawal," like section 20 of the customs administrative act of 1890, refers to the rate and not the amount of duty assessed.

The rights of the Government having accrued under the appraisement already made were preserved unaffected by the new act amending previous laws.—T. D. 30542 (G. A. 7008).

Gauging of Whisky in Bonded Warehouse.—Imported whisky which has been entered in bond for warehouse is properly assessable for duty under paragraph 289, tariff act of 1897, on the quantity of the whisky as ascertained at the time of entry in bond, and not upon the quantity as shown by the gauge of the whisky at the time of the withdrawal from bond. Following *In re Godley*, G. A. 6049 (T. D. 26384), and decision of the circuit court of appeals in the case of *Louisville Public Warehouse Co. v. Surveyor* (49 Fed. Rep., 561; 1 C. C. A., 371).

Any such abatement of duties is prohibited by section 2983, Revised Statutes of the United States, which was not repealed by section 20, customs administrative act, June 10, 1890, as amended by the act of December 15, 1902 (32 Stat. L., Pt. I, p. 753). *U. S. v. Falk* (204 U. S., 143; 27 Sup. Ct. Rep., 191; T. D. 27832).—T. D. 28178 (G. A. 6597).

Distinction Between Rate and Weight.—Section 20, customs administrative act of 1890, as amended by the act of December 15, 1902 (T. D. 24109), wherein it is provided as to merchandise withdrawn from bonded warehouse that "the same rate of duty shall be imposed thereon as may be imposed by law upon

like articles imported at the time of withdrawal," refers to rate of duty rather than to the weight of the merchandise.—T. D. 27933 (G. A. 6545).

Permit of Delivery—Withdrawal.—In construing the provision in section 20, customs administrative act of 1890, as amended by the act of December 15, 1902 (32 Stat., 953; T. D. 24106), permitting merchandise in bonded warehouse to be "withdrawn for consumption on payment of the duties to which it may be subject by law at the time of such withdrawal." *Held*, that, where duties are paid upon merchandise and the permits issued for its removal have been delivered to the storekeeper, the merchandise is "withdrawn for consumption" and is subject to duties as of that time, regardless of whether it continued in the warehouse in the manual custody of the Government.

Section 20, customs administrative act of 1890, as amended by the act of December 15, 1902 (32 Stat., 953; T. D. 24109), subjecting merchandise withdrawn from bonded warehouse to the rate of duty in force "at the time of such withdrawal," means the rate applicable when the withdrawal takes place and not that applicable at the time of liquidation.—*Franklin Sugar Refining Co. v. U. S.* (U. S.), T. D. 27412; T. D. 27261 (C. C.) and (G. A. 5885) T. D. 25914 affirmed.

Porto Rican Products.—Merchandise was imported from Porto Rico and entered for warehouse after that island had become a part of the United States but before the act of April 12, 1900 (31 Stat., 77; T. D. 22198), took effect. At the time of entry it was not legally subject to duty. On being withdrawn from warehouse after said act took effect the collector of customs exacted the payment of the duties prescribed by the act on "merchandise previously entered under bond for warehousing." *Held*, that this exaction was illegal.—*Bidwell v. Levi* (C. C. A.), T. D. 27411; T. D. 26803 (C. C.) affirmed.

Countervailing Duty Applicable When Rate Changes While Petroleum Products are in Government Custody.—Imported merchandise in possession of the Government awaiting liquidation, and prior to the issuance of a permit of delivery, is constructively in a bonded warehouse within the meaning of section 20, act of June 10, 1890, as amended by the act of December 15, 1902, and while the right to duty attaches at the date of entry, the rate of duty is that in effect on the day the Government's custody over the merchandise ceases and the importer's begins. *Hartranft v. Oliver* (125 U. S., 525).—T. D. 25360 (G. A. 5870).

Duty Applicable to Merchandise Withdrawn From Bonded Warehouse.—On appeal from a decision construing section 20, customs administrative act of June 10, 1890, it appeared that Congress, in consequence of the apprehended results of said decision, had, in the act of December 15, 1902 (32 Stat., 753), enacted an amendment which, as reported to the House of Representatives by the committee in charge of the bill, was intended to "confine the language of the section [20] to the primary meaning and intent of the law." *Held*, that the later statute should in this case be taken as declaratory of the meaning of the earlier one, and that said section should be construed to have had the effect given by the amendment.

Though, in construing a law a court may not, in order to reach a conclusion as to legislative intent, inquire what individual Members of Congress supposed a bill to mean, or what they intended to accomplish by their votes, it may consult the history of the act and the report of committees having it in charge.

The provision in section 20, customs administrative act of June 10, 1890, that merchandise in bonded warehouses may be withdrawn for consumption "on payment of the duties and charges to which it may be subject by law at the

time of said withdrawal," means such payment as like merchandise would be subject to if imported at the time of withdrawal.—*Mosle v. Bidwell* (C. C. A.), T. D. 25276.

Sugars From Porto Rico Withdrawn From Bond After Act of April 12, 1900.—Sugars imported from Porto Rico after the cession of the island to the United States and placed in bonded warehouse prior to the enactment of the act of April 12, 1900 (31 State., 77), and not withdrawn until after said act took effect, are dutiable under its provisions, although they were nondutiable when they were imported.—*De Pass v. Bidwell*, 124 Fed. Rep., 615.

R. S. 2970 Repealed.—The act of June 10, 1890, repeals Revised Statutes 2970; and the duties on goods withdrawn after the act of June 10, 1890, went into effect, though deposited before, are those only which are imposed by section 20, act of June 10, 1890.—*Schmid v. U. S.* (C. C.), 66 Fed. Rep., 744.

T. That in all suits or informations brought, where any seizure has been made pursuant to any Act providing for or regulating the collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant, and in all actions or proceedings for the recovery of the value of merchandise imported contrary to any Act providing for or regulating the collection of duties on imports or tonnage, the burden of proof shall be upon the defendant: *Provided*, That probable cause is shown for such prosecution, to be judged of by the court.

SEC. 28.

1909 Subsec. 20: That in all suits or informations brought, where any seizure has been made pursuant to any Act providing for or regulating the collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant: *Provided*, That probable cause is shown for such prosecution, to be judged of by the court.

1890 SEC. 21. That in all suits or informations brought, where any seizure has been made pursuant to any Act providing for or regulating the collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant: *Provided*, That probable cause is shown for such prosecution to be judged of by the court.

1913 Section 28, subsection 21, Act of 1909, embodied in the Act of 1913, section 4, paragraph S.

SEC. 28.

1909 Subsec. 21: That all fees exacted and oaths administered by officers of the customs, except as provided in this Act, under or by virtue of existing laws of the United States, upon the entry of imported goods and the passing thereof through the customs, and also upon all entries of domestic goods, wares, and merchandise for exportation, be, and the same are hereby, abolished; and in case of entry of merchandise for exportation, a declaration, in lieu of an oath, shall be filed, in such form and under such regulations as may be prescribed by the Secretary of the Treasury; and the penalties provided in the sixth section of this Act for false statements in such declaration shall be applicable to declarations made under this section: *Provided*, That where such fees, under existing laws, constitute, in whole or in part, the compensation of any officer, such officer shall receive, from and after the passage of this Act, a fixed sum for each year equal to the amount which he would have been entitled to receive as fees for such services during said year.

1890 SEC. 22. That all fees exacted and oaths administered by officers of the customs, except as provided in this Act, under or by virtue of and the passing thereof through the customs, and also upon all entries existing laws of the United States, upon the entry of imported goods of domestic goods, wares, and merchandise for exportation, be, and the same are hereby, abolished; and in case of entry of merchandise

for exportation, a declaration, in lieu of an oath, shall be filed, in such form and under such regulations as may be prescribed by the Secretary of the Treasury; and the penalties provided in the sixth section of this Act for false statements in such declaration shall be applicable to declarations made under this section: *Provided*, That where such fees, under existing laws, constitute, in whole or in part, the compensation of any officer, such officer shall receive, from and after the passage of this Act, a fixed sum for each year equal to the amount which he would have been entitled to receive as fees for such services during said year.

DECISIONS UNDER SECTION 28, SUBSECTION 21, ACT OF 1909. AND SECTION 22, ACT OF JUNE 10, 1890, AND OTHER DECISIONS RELATIVE TO FEES AND CHARGES FOR SERVICES.

Pay of Watchmen on Vessels Lightered of Cargoes.—The Secretary of the Treasury has plenary power by statute to superintend the collection of duties or imposts and tonnage and to prescribe regulations not inconsistent with law to prevent frauds upon the customs revenue. He may authorize his agents, in the discharge of their duties, to insist that all cargoes should be actually landed for inspection, and in permitting the discharge of cargoes upon lighters he is granting a privilege to the importer. In the exercise of this privilege by the importer he suffers no wrong in being required to pay for watchmen's services.—*Arbuckle Bros. v. U. S. (Ct. Cust. Appls.)*, T. D. 32362; (*G. A. Ab. 26149*) T. D. 31774 affirmed.

Packed-Package Entries.

STORAGE CHARGES.—Section 2926, Revised Statutes, authorizing the storage, at the expense of the owner, of merchandise "of which incomplete entry has been made, or an entry without the specification of particulars, either for want of the original invoice or for any other cause," was as to packed packages modified by the act of May 1, 1876 (19 Stat., 49), which legalizes the entry of such packages without any invoice.

FEE FOR CLEARANCE.—A fee charged by a collector of customs upon the clearance of a packed package is not a charge for the removal or storage of merchandise as provided in section 2926, Revised Statutes; and such charge is illegal under section 22, customs administrative act of 1890, abolishing "all fees exacted upon the entry of imported goods and the passing thereof through the customs."—*U. S. v. American Express Co. (C. C.)*, T. D. 28285; (*G. A. 6552*) T. D. 27962 affirmed without opinion.

Per Diem Expenses of Inspectors on Vessels.—The collector of customs at the port of Astoria, Oreg., at which vessels bound for Portland are compelled to stop, under section 2588, Revised Statutes, can not charge the master of such vessel for the expenses of an inspector placed on board where the vessel's cargo has been bonded as provided by statute, and arrives under seal. Where, however, a vessel, although bonded, arrives at Astoria with open hatches and stores unsealed, the collector is authorized to place an inspector on board at the expense of the master.—T. D. 21818 (*G. A. 4610*).

Legitimate Charge for a Certificate of Weight.—A charge or fee of 20 cents, made by the collector of customs for an official certificate given by him as to the weight of imported merchandise as returned by the United States weigher, issued at the request and solely for the convenience of the applicant, is properly exacted under section 2654, Revised Statutes (ninth subdivision), and was not abolished by section 22 of the act of June 10, 1890. *U. S. v. Jahn* (65 Fed. Rep., 792) distinguished.—T. D. 19946 (*G. A. 4242*).

Charge for Services of Chemist on Reexamination of Opium.—A reasonable charge for the services of a competent analytical chemist in making a

reexamination of imported opium to test the percentage of morphia contained in the drug may be exacted of the importer under the provisions of United States revenue statutes,* section 2936, and article 861, Customs Regulations, 1892.—T. D. 18233 (G. A. 3943).

Fee for Entry Under Section 4382, Revised Statutes.—A vessel enrolled and licensed for the coasting and foreign trade on the northern frontier (Rev. Stat., secs. 4318, 4319), which clears at an American port, touches at an intermediate Canadian port, and thence immediately enters at an American port of destination (both American ports being in the same collection district) is liable to pay the fee for entry provided in section 4382, Revised Statutes, for vessels "direct from a foreign port."—T. D. 18230 (G. A. 3940).

Per Diem Charges of Inspectors for Overtime.—The per diem charges of Government inspectors for overtime in discharging vessels are properly computed upon the basis that the "working days" of a vessel (29 U. S. Stat., 115) are to run from the date of the entry of the vessel, and not from the day of designating the final port of discharge (27 U. S. Stat., 41).—T. D. 18229 (G. A. 3939).

Fees, Dutiable and Nondutiable.—Fees for certifying copy of outward manifest (20 cents) and for port certificate of domestic merchandise (20 cents), are abolished by section 22, act of June 10, 1890. Fees for clearing of foreign vessel for foreign port (\$2.50), bill of health (20 cents), and charges for cording and sealing merchandise for transportation in bond across the United States under articles 444 and 445, Customs Regulations, 1892 (per package 8 cents), are not fees which are incidental to the entry of goods, or of domestic goods for exportation, or of passing same through the customhouse, and are not abolished.—T. D. 16581 (G. A. 3277).

Charges for Storage, Labor, and Drayage incurred in handling merchandise entered on pro forma invoice and conveyed to the public store under R. S. 2926 are not abolished by section 22, act of June 10, 1890.—T. D. 16573 (G. A. 3269).

Fees for Manifests.—The fees for receiving manifests of each railroad car under R. S. 4382, paragraph 24, are abolished. T. D. 10247 (G. A. 25) overruled.—T. D. 16292 (G. A. 3121).

Weighers' and Gaugers' Fees authorized by R. S. 3023 and 3024 are abolished.—T. D. 15998 (G. A. 3022).

Charges, Inspector's, for Discharging Vessel.—Vessels permitted to discharge logwood at Flushing, Long Island, and importer charged, under act of June 26, 1884, section 29 (23 Stat., 59, 60), with mileage and per diem of inspector. *Held*, that the importer is chargeable with this expense.—T. D. 15377 (G. A. 2837).

Goods Left in Public Stores Subject to Certain Storage and Labor Charges.—Reasonable charges for storage and labor at the port of New York are not prohibited by section 22, act of June 10, 1890. Two days, excluding legal holidays, is a reasonable time to allow importers to remove goods from warehouse.—T. D. 15476 (G. A. 2825).

Charges on Warehoused Lumber.—Lumber entered for rewarehouse and withdrawn for exception. The collector kept it (T. D. 9732) at the expense of the owner. *Held*, that this expense was not an illegal exaction.—T. D. 15026 (G. A. 2603).

Charges for Overtime of Discharging Officers is limited to vessels laden with coal and salt, and the Secretary has no authority to include (art. 127,

Regulations of 1892) vessels laden with similar bulky articles.—T. D. 13891 (G. A. 2044).

Steamer bound to Philadelphia was towed into port at New York in distress and repaired, bond being given and hatches not opened. *Held*, that the charge of 23 days overtime for an inspector at \$4 per day was not authorized.—T. D. 12973 (G. A. 1524).

Charges for Measuring Imported Laces.—The expense of measuring certain laces exacted under R. S. 2920 and article 49 held to have been properly exacted.—T. D. 13556 (G. A. 1828).

Fees for Gauging Rum exported to Africa were properly exacted. The fact that the Government had no interest in it for drawback purposes is not material. R. S. 334, 335, and 3812, relating to statistics, is sufficient to show that the rum was gaugeable.—T. D. 13554 (G. A. 1826).

Weighers' and Gaugers' Fees.—Where the invoice or entry does not show the weight, or quantity, or measure of merchandise, and it is weighed, gauged, or measured under R. S. 2920, the fees therefor are not abolished.

Imported merchandise is weighed to ascertain the duty to which it is subject according to its weight, and this is done at the expense of the Government. Merchandise exported is weighed to ascertain the amount of drawback, and this is done at the expense of the owner and for his benefit. Imported merchandise is gauged to ascertain the duty per gallon and at the expense of the Government. Exported merchandise is gauged to ascertain drawback, and this is for the benefit of the owner and at his expense.—T. D. 10503 (G. A. 153).

Fees for Permits, Owners' Oaths, Certificates, etc., paid prior to August 1, 1890 (under R. S. 2654), are authorized.—T. D. 10328 (G. A. 49).

Charges on Merchandise Entered Without an Invoice.—A charge by a collector for storage in a public store, for labor, and for cartage from the general-order warehouse to the public store, made upon uninvoiced and unclaimed goods under the value of \$100 sent to the general-order warehouse and taken thence to a public store for examination on the application of the owner, is a valid charge authorized by law.—*Kennedy v. Magone*, 158 U. S., 212.

Where an importer chooses to enter goods of less value than \$100, without a certified invoice, charges for cartage to the appraiser's stores and for storage and labor at such stores may properly be exacted.—*Kennedy v. Magone* (C. C.), 41 Fed. Rep., 768.

Storage Charges on Merchandise Remaining on Vessel.—Where no warehouse entry of goods was made, but the importer wrote on the entry the words "vessel, as warehouse," and the goods remained in the vessel only two days beyond the period allowed for the discharge of the cargo and the collector exacted \$10 for half storage, *Held* that the charge was illegal.—*Ogden v. Barney*, 5 Blatchf., 189; 18 Fed. Cas., 607.

When goods were entered for warehouse, but before they were removed to the warehouse the importer applied for a permit to land the goods for consumption, and the collector, under instructions from the Treasury Department, charged him for half a month's storage, although the goods had remained all the time on board the vessel and the importer paid the amount under protest, *Held* that the charge was an illegal one, but that the payment of it was voluntary, as the importer might have allowed the goods to go to the warehouse and have withdrawn them from there and that therefore the amount could not be recovered.—*Irvin v. Schell*, 5 Blatchf., 157; 13 Fed. Cas., 106.

Weighing and Gauging Charges on Goods Entered for Export.—The charges for weighing and gauging merchandise entered for export originally

provided by acts July 26, 1866 (14 Stat., 289), and March 2, 1866 (14 Stat., 470), and afterwards embodied in sections 3023 and 3024, Revised Statutes, were fees, and as such were abrogated by section 22, act of 1890.—U. S. v. Jahn, 65 Fed. Rep., 792, reversing T. D. 10246 (G. A. 24).

U. That if any person, persons, corporations, or other bodies, selling, shipping, consigning, or manufacturing merchandise exported to the United States, shall fail or refuse to submit to the inspection of a duly accredited investigating officer of the United States, when so requested to do, any or all of his books, records, or accounts pertaining to the value or classification of such merchandise, then the Secretary of the Treasury, in his discretion, is authorized while such failure or refusal continues to

1913 levy an additional duty of 15 per centum ad valorem on all such merchandise when imported into the United States: *Provided, however*, That such additional duties shall not be imposed in case the laws of the country of exportation provide for the administration, by its duly authorized officers, of oaths to invoices, or statements of cost, before certification by consuls, and for punishment for false swearing under said oaths, whenever consuls are directed by the Secretary of State, under section twenty-eight hundred and sixty-two of the Revised Statutes, to require such oaths before certification of the invoices.

1909 (No corresponding provision.)

1890 (No corresponding provision.)

V. That if any person, persons, corporations, or other bodies, engaged in the importation of merchandise into the United States or engaged in dealing with such imported merchandise, shall fail or refuse to submit to the inspection of a duly accredited investigating officer of the United States, upon request so to do from the chief officer of customs at the port where such merchandise is entered, any or all of his books, records, or accounts pertaining to the value or classification of any such imported merchandise, then the Secretary of the Treasury, in his discretion, is authorized while such failure or refusal continues, to assess additional duty of 15 per centum on all merchandise consigned to or imported by, or shipped, or intended for delivery, to such person, persons, corporations, or other bodies so failing or refusing.

1909 (No corresponding provision.)

1890 (No corresponding provision.)

DECISIONS UNDER THE ACT OF 1913.

Additional Duty—Paragraph V.—An additional duty of 15 per cent imposed for failure to permit the inspection of records, pursuant to the provisions of paragraph V of section 3.—Dept. Order (T. D. 36445).

DECISIONS UNDER THE ACT OF 1909.

Seizure of Documents.

SEARCH WARRANT.—A customs inspector to whom a search warrant was issued to search for and seize merchandise fraudulently introduced into the United States removed certain letters, books, and papers from the premises, which removal constituted a trespass.

ABUSE OF MANDATE.—A United States commissioner does not act judicially in issuing a search warrant authorizing a customs inspector to search certain premises for merchandise fraudulently introduced into the United States and to seize the same, if found, as provided by 3066, Revised Statutes; hence such a warrant is not to be regarded as issued under the authority of the court.

CUSTOMS INSPECTOR—MISUSE OF PROCESS.—Where a customs inspector, assisted by an inspector of the Department of Commerce and Labor, entered petitioner's premises pursuant to search warrant issued by a United States commis-

sloner authorizing the customs inspector and his assistant to search for merchandise fraudulently introduced into the United States, and without authority removed certain letters and other documents and records, which they refused to return, they in so doing were not acting as officers of a Federal court, and therefore were not subject to be proceeded against for contempt in a Federal court under the Judicial Code (36 Stat., 1163).

Petition by Chin K. Shue for an order compelling William H. Tighe, customs inspector for the Massachusetts district, and Richard Taylor, an inspector of the Department of Commerce and Labor, to return certain letters and documents taken from petitioner's place of business pursuant to a search warrant and to punish them for alleged abuse of process, denied.—In re Chin K. Shue (D. C.), T. D. 33032.

1913 W. That where merchandise purchased or manufactured in different consular districts in the same country is assembled for shipment and embraced in a single invoice and consulated at the shipping point, such invoice shall have attached thereto the original bills or invoices or statements in the nature of such, showing the prices actually paid, contracted to be paid, fixed, or determined, and in connection with each such purchase or consignment the invoice shall state all charges and expenses as provided in paragraph R of this section.

1909 (No corresponding provision.)

1890 (No corresponding provision.)

1913 X. No allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction, or injury to fruit or other perishable articles imported into the United States whereby their commercial value has been destroyed, unless under regulations prescribed by the Secretary of the Treasury. Proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise. The provisions hereof shall apply whether or not the merchandise has been entered, and whether or not the duties have been paid or secured to be paid, and whether or not a permit of delivery has been granted to the owner or consignee. Nor shall any allowance be made for damage, but the importers may within ten days after entry abandon to the United States all or any portion of goods, wares, or merchandise of every description included in any invoice and be relieved from the payment of duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to 10 per centum or more of the total value or quantity of the invoice. The right of abandonment herein provided for may be exercised whether the goods, wares, or merchandise have been damaged or not, or whether or not the same have any commercial value: *Provided further*, That section twenty-eight hundred and ninety-nine of the Revised Statutes, relating to the return of packages unopened for appraisement, shall in no wise prohibit the right of importers to make all needful examinations to determine whether the right to abandon accrues, or whether by reason of total destruction there is a nonimportation in whole or in part. All merchandise abandoned to the Government by the importers shall be delivered by the importers thereof at such place within the port of arrival as the chief officer of customs may direct, and on the failure of the importers to comply with the direction of the collector or the chief officer of customs, as the case may be, the abandoned merchandise shall be disposed of by the customs authorities under such regulations as the Secretary of the Treasury may prescribe, at the expense of such importers. Where imported fruit or perishable goods have been condemned at the port of original entry within ten days after landing, by health officers or other legally constituted authorities, the importers or their agents shall, within twenty-four hours after such condemnation, lodge with the collector, or the person acting as collector, of said port, notice thereof in writing, together with an invoice description and the quantity of the articles condemned, their location,

1913

and the name of the vessel in which imported. Upon receipt of said notice the collector, or person acting as collector, shall at once cause an investigation and a report to be made in writing by at least two customs officers touching the identity and quantity of fruit or perishable goods condemned, and unless proof to ascertain the shortage or nonimportation of fruit or perishable goods shall have been lodged as herein required, or if the importer or his agent fails to notify the collector of such condemnation proceedings as herein provided, proof of such shortage or nonimportation shall not be deemed established and no allowance shall be made in the liquidation of duties chargeable thereon.

SEC. 28.

1909

Subsec. 22: No allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction, or injury to fruit or other perishable articles imported into the United States whereby their commercial value has been destroyed, unless under regulations prescribed by the Secretary of the Treasury. Proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise. The provisions hereof shall apply whether or not the merchandise has been entered, and whether or not the duties have been paid or secured to be paid, and whether or not a permit of delivery has been granted to the owner or consignee. Nor shall any allowance be made for damage, but the importers may within ten days after entry abandon to the United States all or any portion of goods, wares, or merchandise of every description included in any invoice and be relieved from the payment of duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to 10 per centum or more of the total value or quantity of the invoice. The right of abandonment herein provided for may be exercised whether the goods, wares, or merchandise have been damaged or not; or whether or not the same have any commercial value: *Provided further*, That section twenty-eight hundred and ninety-nine of the Revised Statutes, relating to the return of packages unopened for appraisement, shall in no wise prohibit the right of importers to make all needful examinations to determine whether the right to abandon accrues, or whether by reason of total destruction there is a nonimportation in whole or in part. All merchandise abandoned to the Government by the importers shall be delivered by the importers thereof at such place within the port of arrival as the chief officer of customs may direct, and on the failure of the importers to comply with the direction of the collector or the chief officer of customs, as the case may be, the abandoned merchandise shall be disposed of by the customs authorities under such regulations as the Secretary of the Treasury may prescribe, at the expense of such importers. Where imported fruit or perishable goods have been condemned at the port of original entry within ten days after landing, by health officers or other legally constituted authorities, the importers or their agents shall, within twenty-four hours after such condemnation, lodge with the collector, or the person acting as collector, of said port, notice thereof in writing, together with an invoice description and the quantity of the articles condemned, their location, and the name of the vessel in which imported. Upon receipt of said notice the collector, or person acting as collector, shall at once cause an investigation and a report to be made in writing by at least two customs officers touching the identity and quantity of fruit or perishable goods condemned, and unless proof to ascertain the shortage or nonimportation of fruit or perishable goods shall have been lodged as herein required, or if the importer or his agent fails to notify the collector of such condemnation proceedings as herein provided, proof of such shortage or nonimportation shall not be deemed established and no allowance shall be made in the liquidation of duties chargeable thereon.

1890

SEC. 23 [as amended by the act of May 17, 1898, 30 Stat., 417; T. D. 19381]. That no allowance for damage to goods, wares, and merchandise imported into the United States shall hereafter be made in the estimation and liquidation of duties thereon, but the importer thereof may,

1890 within ten days after entry, abandon to the United States all or any portion of goods, wares, and merchandise included in any invoice and be relieved from the payment of the duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to 10 per centum or over of the total value or quantity of the invoice, and the property so abandoned shall be sold by public auction or otherwise disposed of for the account and credit of the United States under such regulations as the Secretary of the Treasury may prescribe. All merchandise so abandoned by the importer thereof shall be delivered by such importer at such place within the port of arrival as the chief officer of customs may direct, and on the failure of the importer to comply with the directions of the collector in this respect the abandoned merchandise shall be disposed of by the collector at the expense of such importer.

DECISIONS UNDER THE ACT OF 1913.

Computation of Allowance for Rot—Grapes in Barrels.—Under paragraph 219 of the tariff act of 1913 grapes in barrels are made dutiable at 25 cents per cubic foot of the capacity of the barrels or packages. Allowance in duty for rot in grapes is not to be computed upon the percentage which the decayed grapes bear to the entire quantity of grapes in the container, but to the percentage which such decayed part bears to the cubical capacity of the container. *Harris v. U. S.* (3 Ct. Cust. Appls., 265, 271; T. D. 32570).—T. D. 35133 (G. A. 7684).

Allowance—Decay—Fruit, etc.—T. D. 34241 of March 9, 1914, amended to permit the filing of allowance claims for decay in fruit and other perishable articles within 96 hours after arrival of importing vessel. Examination to determine the amount of decay to be made by weigher or gauger of surveyor's office. T. D. 30023 amended.—Dept. Order (T. D. 34737).

DECISIONS UNDER THE ACT OF 1909.

Claim for Allowance—Notice—Proof.

NOTICE WITHIN 48 HOURS OF INTENTION TO CLAIM IS A PREREQUISITE TO ALLOWANCE FOR DESTRUCTION.—Where the importers of grapes, part of which are claimed to have been rotten, did not comply with subsection 22 of section 28, tariff act of 1909, and the regulation of the Secretary of the Treasury that notice of an intention to claim an allowance must be filed with the collector within 48 hours after the arrival of the importing vessel, the allowance will not be made.

MAKING OF PROOF WITHIN 10 DAYS ALSO A PREREQUISITE.—Where such claim was seasonably filed and no evidence to support it was filed with the collector within 10 days after the arrival of the importing vessel, as required by said statute and regulation, the allowance will not be made; and the fact that the appraiser made no report on the claim to the collector, as required by regulation, does not relieve the claimant of the duty to make proof within 10 days and allow him to make it afterwards.—*H. Harris & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 35978; (G. A. 7677) T. D. 35120 affirmed.

GRAPES IN BARRELS.—It has been decided that the provisions of subsection 22 of section 28 of the tariff act of 1909, providing for an allowance in the estimation and liquidation of duties upon fruit when, by reason of decay, destruction, or injury during transportation, a shortage or nonimportation occurs, are applicable to grapes in barrels dutiable on the cubic capacity of the barrels. *Harris v. U. S.* (3 Ct. Cust. Appls., 265; T. D. 32570); *U. S. v. Harris* (4 Ct. Cust. Appls., 116; T. D. 33392).

COMPLIANCE WITH STATUTE AND REGULATIONS OF THE SECRETARY OF THE TREASURY.—The board and the courts have also held that a strict compliance with the requirements of the law and the regulations of the Secretary of the

Treasury made pursuant thereto, in regard to the manner and the time within which examination of fruit is to be made and the time within which return is to be made by the appraiser or proof of rot lodged with the collector, is a condition precedent to an importer's right of allowance. *Vandegrift v. U. S.* (3 Ct. Cust. Appls., 198; T. D. 32470); *U. S. v. Zito* (3 *Ib.*, 209; T. D. 32531); *In re Amorosa, G. A. 7612* (T. D. 34822).

SUSPENSION OF REGULATIONS BY SECRETARY OF THE TREASURY.—The importers in this case contend, among other things, that the regulation of the Secretary of the Treasury requiring the appraiser to make a return of his examination to the collector within 10 days after landing of the merchandise was suspended and became a nullity during the period of time when most of these importations were made, owing to the Secretary's own action and instructions. *Held*, that, even assuming such to be the case, the Secretary could in no manner suspend or abrogate the express provision of the statute itself, so that the importers were not relieved nor prevented from lodging proof of rot with the collector themselves within 10 days after the landing of the merchandise.—T. D. 35120 (G. A. 7677).

REGULATIONS OF THE SECRETARY OF THE TREASURY.—Subsection 22 of section 28 of the tariff act of 1909 provides that "no allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction, or injury to fruit or other perishable articles unless under regulations prescribed by the Secretary of the Treasury." Regulations issued in pursuance of such authority, unless unreasonable or in contravention of the statute itself, have the force and effect of law.

TIME OF FILING PROOF—LIMITATION BY STATUTE.—While the statute also provides that "proof to ascertain such destruction or nonimportation shall be lodged with the collector within 10 days after the landing of such merchandise," it is silent as to the time and manner in which examination of the fruit is to be made for the purpose of determining the amount of rot. Impliedly Congress left this latter question a matter of regulation by the Secretary under the general authority quoted above.

CONDITIONS PRECEDENT TO RIGHT OF ALLOWANCE.—In this case the regulations of the Secretary governing importations of lemons (T. D. 31699) limit the time within which sampling and examination are to be made to 96 hours after the arrival of the vessel. Hence, to be entitled to any relief an importer must comply with said regulations regarding the time and manner of examination, and have his proof filed with the collector within the time limited by the statute. *Vandegrift v. U. S.* (3 Ct. Cust. Appls., 198; T. D. 32470); also *U. S. v. Zito* (3 *Ib.*, 209; T. D. 32531).—T. D. 34822 (G. A. 7612).

Notice of Claim for Allowance on Condemned Goods.—Part of the consignment of potatoes was condemned at the port of entry by the board of health as unfit for use. Certificates to this effect were made by the inspector May 24, 1912. On May 14, preceding, the importer had served notice that he made application to have the merchandise assorted. No other notice was given. The requirements of the statute as to notice are mandatory, and they were not complied with. *Houlder v. U. S.* (4 Ct. Cust. Appls., 247; T. D. 33480); *Lauricella et al. v. U. S.* (4 Ct. Cust. Appls., 253; T. D. 33482).—*Shallus v. U. S.* (Ct. Cust. Appls.), T. D. 34101; (G. A. Ab. 33291) T. D. 33677 affirmed.

Abandonment.

DELIVERY NOT A CONDITION OF RIGHT TO ABANDON.—The requirement in subsection 22 of section 28, tariff act of 1909, that the importer shall deliver abandoned goods at the instance of the chief officer of customs, is not a condi-

tion on which the right to abandon and be relieved from the payment of duty depends.

MEANING OF "DELIVERABLE."—Damaged goods, such as cotton gloves, landed upon a steamship dock mingled with a great variety of other merchandise in a damaged condition, are nevertheless "deliverable" within the meaning of that term as used by the Court of Customs Appeals in *Thomas v. U. S.* (4 Ct. Cust. Appls., 51; T. D. 33305).

MEANING OF "INVOICE."—The invoice referred to in the provision of subsection 22 of section 28, tariff act of 1909, that "the portion so abandoned shall amount to 10 per cent or more of the total value or quantity of the invoice," refers to the invoice upon which entry is made, which may be distinguished from the consulated invoice.—T. D. 34032 (G. A. 7523).

Evidence—Imperfect Record.—The record as to findings is so lacking in essentials that, without prejudice, the cause is remanded for a new trial.—*Maniscalco v. U. S.* (Ct. Cust. Appls.), T. D. 34007; (G. A. Ab. 33302) T. D. 33677 remanded.

Regulation of Secretary of Treasury Held Void.—The regulation of the Secretary in T. D. 31699 requiring that importers shall file within 5 days after condemnation the certificate of the board of health is without authority of law and is void. The statute itself would seem to prescribe the mode of proof and the time within which it is to be filed. *Lauricella v. U. S.* (4 Ct. Cust. Appls., —; T. D. 33482).—T. D. 33708 (G. A. 7491).

Abandonment of 10 Per Cent of Quantity.—The importer under this provision of the law may abandon a certain portion of his importation, provided that portion shall amount to 10 per cent or more either in value or quantity of the invoice. Quantity, however, does not necessarily mean weight, unless it is merchandise which is bought and sold by weight. The merchandise in question is an article that is bought and sold by the dozen or by the yard, and it does not appear that the case which it is sought to abandon is either 10 per cent in value or in quantity. The protest is therefore overruled.—Ab. 33224 (T. D. 33668).

Regulation of Secretary of Treasury Held Void.—Nonimportation of a part of the cargo of lemons was claimed. The provision of the statute is that "proof" of destruction or nonimportation "shall be lodged with the collector of customs," etc. There is no limitation in the language of the statute of the kind of proof or otherwise save as to time when this proof may be made by the importer. The statute allows 10 days to introduce such proof; to limit this to 5, as is sought in the Treasury regulation, is in excess of statutory power. *Vandegrift v. U. S.* (3 Ct. Cust. Appls., 198; T. D. 32470) distinguished.—*Lauricella v. U. S.* (Ct. Cust. Appls.), T. D. 33482; (G. A. 7398) T. D. 32881 and (G. A. Ab. 30352) T. D. 32905 reversed.

Rearranging Language in a Statute.—It is a familiar principle of statutory construction that for the determination of legislative intent courts may assemble provisions of a statute in accord with that intent.

Subsection 22, section 28, tariff act of 1909, embraces three separate and distinct matters. The first provides an allowance for "shortage or nonimportation" caused by decay, "destruction," or injury to fruit. The second provides an allowance for "damage" and permits, under prescribed circumstances, an "abandonment" to the Government. The third provides for an allowance where goods are "condemned by the health officers or other legally constituted authorities."—(Ct. Cust. Appls.) T. D. 33482.

Condemned Fruit.—The importation was of dates and a part of the cargo was condemned and destroyed at the port of entry. Regardless of the regulations promulgated by the Secretary of the Treasury under this subsection and putting aside the question of the validity or of the application here of these regulations, the importer is without remedy for the reason there was a failure to comply with the mandatory requirements of the statute itself. *Lauricella et al. v. U. S.* (4 Ct. Cust. Appls., —; T. D. 33482), *supra*.—*Houlder v. U. S.* (Ct. Cust. Appls.), T. D. 33480; (G. A. Ab. 29911) T. D. 32842 affirmed.

Claims for Allowance—Meaning of “Landing.”—The importation of grapes for the Boston market were entered partly at Boston, partly at New York for transshipment thence to Boston. Were the grapes immediately transshipped from New York “landed” there or in Boston? The fair inference from the acts and regulations that govern is that the “landing” referred to in subsection 22 of section 28, tariff act of 1909, is the landing at the port of actual destination; in this case, at the port of Boston.—*U. S. v. Harris & Co. et al.* (Ct. Cust. Appls.), T. D. 33392; (G. A. Ab. 28947) T. D. 32655 affirmed.

Goods Sunk in Water Are Not “Deliverable.”—Where an attempt has been made to abandon imported merchandise under section 28, subsection 22, tariff act of 1909, the goods abandoned must be in a condition to be delivered or they can not be lawfully abandoned. If they have been destroyed by being sunk in the water and can not be delivered it is fatal to any recovery.—*T. D. 33324* (G. A. 7454).

Goods Lost Overboard After Payment of Duty.—Duty had accrued on these goods before delivery to the importer. By request he was given permission to unload over the vessel's side, at his own risk, and the goods passed thus out of the custody and control of the customs officers. Loss occurred by sinking in consequence of a collision after payment of duty thereon and after the receipt of the merchandise by the importer. Subsection 22 of section 28, tariff act of 1909, that provides abandonment as an additional remedy, clearly imports that the goods sought to be abandoned thereunder shall be at that very time deliverable. These goods, lost as described, were of course not deliverable, and under the facts it would have been gratuitous to give notice requiring delivery.—*Thomas & Pierson v. U. S.* (Ct. Cust. Appls.), T. D. 33305; (G. A. 7329) T. D. 32273 affirmed.

Goods Lost Overboard by Collision of Lighter After Delivery to Importer.—Although the law provides for the abandonment of goods falling within the description of subsection 22 of section 28, act of 1909, the right of abandonment is gone when the goods have left the custody and control of the Government and have been delivered, duty paid, to the importers prior to their being lost by sinking on a lighter in which the Government had no interest.—*T. D. 32273* (G. A. 7329).

Rotten Onions.

CLAIM FOR ALLOWANCE.—It is provided in the regulations of the Secretary of the Treasury (T. D. 30023) that in order to obtain an allowance on account of shortage or nonimportation caused by decay, destruction, or injury to imported fruit under subsection 22 of section 28, tariff act of 1909, the importers shall, within 48 hours after the arrival of the importing vessel, give notice in writing to the collector of customs of their intention to claim such allowance. Thereupon the form of such claim is given. This does not mean 48 hours from the entry of the vessel, but from the arrival of the vessel.

PROOF BEFORE THE BOARD.—Where the importers have filed no satisfactory proof of any kind within 10 days after the landing of the merchandise, they

will be debarred from making proof by testimony given before the board or of explaining any defective proof by evidence.—T. D. 33278 (G. A. 7448).

Onions were held to be perishable articles within the meaning of subsection 22, section 28, tariff act of 1909. A claim that an allowance for certain rotten onions should have been made overruled for the reason that the regulations of the Secretary of the Treasury had not been complied with. *Vandegrift v. U. S.* (T. D. 32470) cited.—Ab. 29532 (T. D. 32767).

IF APPLICATION FOR ALLOWANCE OF ROT IS NOT FILED IN TIME.—Where, moreover, the application is for allowance of rot or decay in imported fruit, and such application is not filed with the collector of customs within 48 hours after the arrival of the vessel which brought the fruit into this country, the application will be denied.—T. D. 33239 (G. A. 7439).

Filing Claim for Allowance Before Condemnation.—From the record it appears that certain fruit was condemned on August 12. The claim for an allowance on the fruit so condemned was made prior thereto, on August 11. But the statute requires notice shall be given by the importer in such cases after, not before, condemnation. The notice was insufficient.—*Steiner v. U. S.* (Ct. Cust. Appls.), T. D. 33219; (G. A. Ab. 29010) T. D. 32655 affirmed.

Condemned Fruit.—In the case of lemons condemned and destroyed by the board of health, a failure to file the certificate of condemnation within 15 days thereafter is fatal to a recovery of duties on such merchandise. The Secretary of the Treasury, in regulations which he is authorized to make, requires it.—T. D. 32881 (G. A. 7398).

Grapes in Barrels—Allowance May Be Made for Decay.—Subsection 22 of section 28, tariff act of 1909, was intended to provide and does provide for an allowance in the estimation and liquidation of duties upon fruit when, by reason of decay, destruction, or injury during transportation, a shortage occurs, resulting, in fact, in a nonimportation, the commercial value of a designated and reasonably ascertainable quantity of the goods having been destroyed.—*Harris & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 32570; (G. A. 7310) T. D. 32108 affirmed as to part, reversed as to part.

Grapes imported in barrels or other packages are dutiable under paragraph 276, tariff act of 1909, at 25 cents per cubic foot of capacity of barrels or packages.

This paragraph levies a duty on the packages containing the grapes and not on the quantity of grapes contained in such packages. Hence no allowance can be made as a nonimportation for decay in the fruit prior to arrival in this country.—T. D. 32108 (G. A. 7310).

No Allowance on Rotten Fruit Condemned After Delivery.—Subsection 22 of section 28, tariff act of 1909, relating to allowances on nonimportations, was not founded upon any previous tariff act, but originated in the absence of any express statute levying duty upon the described commodities. *Lawder v. Stone* (187 U. S., 281).

No allowance can be made for goods that have gone into the possession of the importer and that are later condemned by a board of health.

What allowance, if any, should be made on an importation is primarily a question of fact to be determined like any other relevant fact in the case. *U. S. v. Shallus* (2 Ct. Cust. Appls., 332; T. D. 32074).—*U. S. v. Zito* (Ct. Cust. Appls.), T. D. 32531; (G. A. Ab. 24556) T. D. 31207 modified.

Proof of Destruction or Nonimportation.—Subsection 22 of section 28 makes express provision for an allowance in the estimation and liquidation of duties upon fruit when, by reason of decay, destruction, or injury during trans-

portation, there is a shortage or, in fact, a nonimportation thereof, its commercial value being destroyed.

The Secretary of the Treasury is empowered to make regulations relative to shortage or nonimportation of merchandise, but the law itself requires that "proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs within 10 days after the landing of the merchandise." A regulation intended to exclude from the consideration of a collector proof that had been so duly filed would be invalid.

The importer here duly filed his proof, and it will be presumed the collector made his decision in the light of it. The board on review affirmed that decision; it will not now be disturbed.—*Vandegrift & Co. v. U. S. (Ct. Cust. Appls.)*, T. D. 32470; (G. A. 7316) T. D. 32148 affirmed.

Proof Must Be Filed with the Collector.—Where a claim is made by protest of an importer for shortage or nonimportation caused by decay in imported fruit, the proof to ascertain such decay is required to be lodged with the collector of customs within 10 days after the landing of such merchandise, and where no such proof is lodged the board will not allow any evidence to be introduced challenging the return of the appraiser as made under the regulations of the Secretary of the Treasury.

This requirement will prevent any proof being made before the board which has not been lodged with the collector within the time required by law.—T. D. 32148 (G. A. 7316).

Decayed Macaroni—Nonimportation.—It is not contended by either party that macaroni is a perishable article within the meaning of the first part of subsection 22 of section 28, tariff act of 1909. The evidence disclosed by the record justifies the conclusion that the macaroni for which allowance was made was, before arrival in port, not merely damaged, but destroyed, and that therefore as to the destroyed portion there was no importation.—*U. S. v. Pastene & Co. (Ct. Cust. Appls.)*, T. D. 32458; (G. A. Ab. 26203) T. D. 31788 affirmed.

Limitations of Time Run from Condemnation and Not Destruction of the Goods.—Where fruit was condemned by the board of health on August 4, 1910, and was subsequently destroyed on August 12, 1910, the limitations of time fixed by subsection 22 of section 28 of the act of 1909 run from the date of condemnation and not from the date of destruction. The seizure of the fruit cut off the right of the importers to take possession of or assert any control over the goods as their own.—T. D. 32270 (G. A. 7326).

Rotten Fruit—Time of Examination.—Whether all, or a portion only, of a cargo of fruit constitutes an importation depends on the facts established by evidence in the particular case. In this particular case the board based its decision on the ground that the evidence offered by the importers was not convincing of error in the return made by the collector and no reason here appears to disturb that finding. *U. S. v. Shallus, supra* (T. D. 32074).—*Cuccio & Co. v. U. S. (Ct. Cust. Appls.)*, T. D. 32075; (Ab. 19724) T. D. 29288 affirmed.

The importers contended for an allowance on account of decay in certain fruit, which contention was overruled in the cases in which the examination of the fruit was not made until eight days or more from the time of arrival in port, but was sustained where the examination was made within a week. Note *Denunzio Fruit Co. v. U. S. (T. D. 29075)* and *G. A. 6777 (T. D. 29094)*.—Ab. 19724 (T. D. 29288).

Abandonment by Importer—Liability for Duties as Affected By.—An importer can not, by exercising the right of abandonment given him under section 28, subsection 22, tariff act of 1909, escape the payment of additional

duties which, by reason of undervaluations, have accrued under the provisions of section 28, subsection 7, of the same act; nor can he by abandonment be relieved from the payment of regular duties upon the appraised value of the goods when such appraised value is an advance of more than 75 per cent over the entered value, which latter is thus made presumptively fraudulent by the terms of section 28, subsection 7.—T. D. 32072 (G. A. 7308).

Nonimportation and Damage Allowances—Jurisdiction of Board.—When fruit or other perishable articles are imported under the present tariff act of 1909, the method of ascertaining the amount of an article so decayed or destroyed that is not subject to any duty is provided for by subsection 22 of section 28 of said act, and the regulations of the Secretary of the Treasury made to carry out the provisions of the statute, as found in T. D. 30023.

This statute and the regulations apply as well to losses by reason of nonimportation or shortage as to losses by damage or condemnation by health boards. And the methods there prescribed are exclusive of all other methods, and unless such regulations are complied with by importers no recovery can be had.

The findings of the examiners detailed to investigate claims under said statute, as reported by the appraiser, are final and conclusive, and will not be reinvestigated by the board on protest filed by the importer.

Such protests should be dismissed by the board on appeal for want of jurisdiction.

The majority of the board are of opinion that although the regulations of the Secretary are not properly complied with the board has jurisdiction of the protest, and in this case it should be overruled and not dismissed.—T. D. 32071 (G. A. 7307).

Rotten Peanuts—Nonimportation.—The importation consists of shelled peanuts.

Following G. A. 7228 (T. D. 31650), the importers are entitled to a deduction of duty on 14,216 pounds, being the amount of said merchandise found to be worthless and unmerchantable at the time of arrival.—Ab. 26017 (T. D. 31744).

Macaroni Not a Perishable Article.—Macaroni is not a perishable article within the meaning of subsection 22 of section 28, tariff act of 1909, relating to allowances for the decay or destruction of "fruit or other perishable articles," on the ground of shortage or nonimportation, nor under sections 2962 and 2975. Revised Statutes, excepting from warehouse privileges merchandise of a perishable nature.

Hence the regulations of the Secretary of the Treasury designed to carry out the provisions of said subsection 22, which are embodied in T. D. 30023, have no reference to the article of macaroni, the nonimportation of which by reason of destruction by decay must be governed by the principle enunciated in *Lawder v. Stone* (187 U. S., 281; 23 Sup. Ct. Rep., 79), followed in board decision *In re Courtin*, G. A. 6356 (T. D. 27324), and affirmed by the circuit court in *U. S. v. Courtin* (153 Fed. Rep., 594; T. D. 27970).—T. D. 31650 (G. A. 7228).

Rotten Fruit—Regulations of Secretary of the Treasury.

SUBSECTION 22, SECTION 28.—The Secretary of the Treasury is authorized to prescribe regulations to carry out the provisions of subsection 22 of section 28, tariff act of 1909, relating to allowances for decay, destruction, or injury to imported fruit.

This provision was designed to abrogate the principle decided by the Supreme Court in *Lawder v. Stone* (187 U. S., 281) giving such allowances under previous tariff acts.

ISSUANCE OF REGULATIONS NECESSARY BEFORE ALLOWANCE.—The promulgation of such regulations is a condition precedent to allowances for decay or

destruction of imported fruit arriving in this country after the enactment of the present act of August 5, 1909.

Protests filed prior to October 4, 1909, the date of promulgating such regulations (T. D. 30023), are properly overruled.

PROOF FILED TOO LATE.—An affidavit making proof of decay in such fruit and not filed with the collector within 10 days after the landing of such merchandise, is properly disregarded by him in making his liquidation—T. D. 31349 (G. A. 7180).

Abandonment—Damage Allowance—Nonimportation.—Regulations contained in T. D. 30023, relative to allowance for damage upon imported fruit, extended to other perishable merchandise. No provision of law under which allowance can be made upon merchandise not perishable unless abandonment be made within 10 days after entry.—Dept. Order (T. D. 30816).

Rotten Fruit—Tariff Act of 1909.—This provision of the new tariff act of 1909 so abrogates the principle decided by the Supreme Court in *Lawder v. Stone* (187 U. S., 281; 23 Sup. Ct. Rep., 79) as to abolish all allowances by way of deduction of duties for decayed or rotten fruit, either caused by damage or constituting a nonimportation, unless on compliance with statutory requirements as a condition precedent to such allowance.—T. D. 30446 (G. A. 6997).

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Nonimportation—Lemons.

WHEN DUTY ATTACHES.—Duty attaches upon imported merchandise at the time the vessel, with the cargo aboard, arrives within the line of the customs district.

WHAT IS A NONIMPORTATION.—A cargo, or part thereof, so far destroyed as to be of no commercial value at the time the importation is brought within the customs district is not, as to the destroyed portion, deemed an "importation of merchandise" within the tariff laws of the United States, and therefor no duty accrues or can be collected thereon.

IMPORTATION DESPITE LOSS IN CARGO.—The destruction or loss of the whole or any part of a cargo of imported merchandise after this enters the line of the customs district and before it is unloaded from the vessel or entered or surrendered from the custody of the customs is not thereby exempted from the payment of duties, unless by reason of express statute or regulation, and then as provided in that statute or regulation.

DECAY IN CARGO A QUESTION OF EVIDENCE.—The Congress has by remedial statute established a rule of evidence in determining the condition of merchandise at the time this crosses the customs line, and the quantity of the merchandise existing at the precise moment of importation, if made an issue, becomes a fact to be proved, as any other fact in issue, by evidence.

PRESENT FINDING AS TO LEMONS.—An examination of all the evidence in this case is persuasive of the correctness of the board's finding, except as to one entry, and on modification the finding is affirmed.—U. S. *v. Shallus* (Ct. Cust. Appls.), T. D. 32074; (G. A. Ab. 20361) T. D. 29449 modified and affirmed.

Wine—Damage by Sea Water.—This is a case of damage rather than nonimportation. The protest assigns no reason why the goods should be free of duty. It is accordingly overruled. Note Conkey's case, G. A. 6997 (T. D. 30446) and G. A. 7056 (T. D. 30753).—Ab. 25816 (T. D. 31675).

Rotten Fruit—Time of Examination.—Importations of lemons were examined after they had lain on the dock for a week, to discover the amount of decayed fruit. *Held*, that as much loss by rotting probably occurred during

that period, the examination should not serve as a basis for determining the condition of the fruit at the time of importation.

It is a general principle of law that duty attaches to imports immediately upon their arrival within the limits of our ports; and while, to ascertain the dutiable condition of the goods, we may perhaps go beyond the date when the vessel containing them drops anchor, it would be going very far to go beyond the date of actual entry.—*Cuccio v. U. S. (C. C.), T. D. 29820; (G. A. 6777) T. D. 29094* affirmed.

Duties upon imported merchandise, as a general rule, attach at the time of its arrival at any port of entry in the United States.

Evidence which only shows the percentages of decay in imported fruit 10 to 15 days after its arrival is not satisfactory to show the condition of such fruit as to decay at the time of its arrival, so as to justify an allowance by the collector or the board on the ground of a shortage or nonimportation.—*T. D. 29094 (G. A. 6777);* affirmed in *T. D. 29820 (C. C.), supra*.

Rotten Fruit—Evidence of Decay.—An importer's testimony as to the amount of decay in his importations of lemons, based on memoranda made from two to five days after he had examined the fruit, is not sufficient, considered in connection with his interest in the outcome of the issue, to outweigh the testimony of a customs examiner, with which it is in direct conflict.

It must be laid down as an almost universal rule that an importer has a greater interest in the outcome of an issue than has a Government official, sworn to the impartial discharge of a public duty; and where an importer's testimony with respect to his own goods is in direct conflict with that of a customs examiner having equal means of acquiring information as to the matter at issue, the latter's testimony is more reliable.—*T. D. 29689 (G. A. 6894)*.

A protest which merely states that a certain specified number of boxes of fruit were seized by the board of health while in the custody of the customs inspectors, on which a refund of duties is claimed, can not be supported by testimony showing certain percentages of decay in the imported fruit where no such seizure was made by the board of health and covering other boxes than those specified in the protest.—*T. D. 29028 (G. A. 6764)*.

Damaged Goods—Abandonment Must Be in Writing.—An oral abandonment of damaged goods under section 23, customs administrative act of June 10, 1890, made by telephone, is insufficient. Such abandonment must be in writing.—*T. D. 29338 (G. A. 6826)*.

Rotten Fruit—Sufficiency of Partial Examination.—In a case in which the exact facts as to the amount of decay in imported fruit might have been clearly ascertained, proof of the extent of the decay in not more than 5 per cent of the packages imported is not sufficient to show the amount of decay in the remaining packages.—*Denunzio Fruit Co. v. U. S. (C. C.), T. D. 29075; (G. A. 6713) T. D. 28712* affirmed.

Rotten Fruit—Examination.

SECTION 2901, REVISED STATUTES.—Where as many as 1 package of every 10 packages of imported fruit, designated by the collector of customs for examination under section 2901 of the Revised Statutes, are actually examined and a certain percentage is ascertained to be rotten and worthless, it may be assumed *prima facie* for the purpose of assessing duty that the same average percentage of rotten fruit exists in the other packages in the importation which were not examined.

WHERE LESS THAN 10 PER CENT OF PACKAGES EXAMINED.—But where less than 10 per cent of such packages are examined no such presumption can be

indulged as to the unexamined packages; and hence reliquidation will be authorized only on the packages actually examined to the extent satisfactorily shown by the evidence.

PERCENTAGE OF DECAY—HOW PROVED.—In such cases it is unnecessary to prove the exact amount of rotten fruit contained in the packages or importation, but the quantity may be proved by satisfactory estimates made by competent witnesses.

WHERE PACKAGES ARE SOLD WITHOUT SEPARATION.—Rotten fruit, worthless and unfit for commerce, and which would be nondutiable if separated from the sound fruit in the same packages, does not become dutiable because not separated and sold in such packages on the market.—T. D. 28712 (G. A. 6713).

Rotten Macaroni.

SEIZURE BY BOARD OF HEALTH.—The date in a certificate given by the board of health of the city of New York purporting to show a seizure and condemnation of macaroni as not fresh, sound, wholesome, and safe for human food, under chapter 19, title 1, sections 42 and 58, Laws of New York, 1900, is prima facie evidence of the date of seizure as shown on the face of the certificate, but may be proved to be erroneous by satisfactory evidence showing the true date of such seizure.

COLLECTOR'S REPORT AS EVIDENCE.—Where an investigation made under the direction of the collector shows that such merchandise was seized and condemned 12 days after importation, and subsequent to the time the articles passed from the custody of customs officers into the possession of the importer, *Held*, that, without further proof, the collector's report is sufficient to overcome the prima facie case shown by the health department's certificate.

DECAY SUBSEQUENT TO IMPORTATION AND DELIVERY.—To constitute a shortage or nonimportation of merchandise claimed to be decayed and unfit for food, such decayed condition must be proved to exist at the time of importation, or at least before the goods are delivered to the importer. Subsequent decay is not material.—T. D. 28887 (G. A. 6743).

Rotten Fruit—Estimation of Decay—Evidence.—Evidence was given as to the amount of decay in sample packages of fruit, which were selected as representative of the whole lot and were used as the basis of the sale of the fruit at auction, and which consisted of at least 10 per cent of the whole number of packages. *Held*, that it might properly be assumed that the same proportion of decay existed in the unexamined packages.—U. S. v. Villari (C. C. A.), T. D. 28654; T. D. 27396 (C. C.) and T. D. 27430 (C. C.) affirmed; (G. A. 5865) T. D. 25843 reversed

The importers of certain fruit, in ascertaining the amount of decay for the purpose of securing an allowance therefor in the assessment of duty, did not pursue the method provided in T. D. 21831, giving them the privilege of opening and repacking the fruit under customs supervision. *Held*, that this was not essential to their right of allowance, as T. D. 21831 applies only to cases of abandonment under section 23, customs administrative act of 1890.—Villari v. U. S. (C. C.), T. D. 27396.

Damaged Goods—When Abandonment May Be Made.—It is a condition precedent to the right of abandonment under section 23, customs administrative act of 1890, that the portion of the merchandise damaged shall amount to 10 per cent or over of the total value or quantity specified on the invoice and originally exported, rather than to only 10 per cent of the amount of the merchandise actually landed or arriving in this country.—T. D. 28573 (G. A. 6683).

Fruit Destroyed by Health Officers—Nonimportation.—The rotten portions of imported fruit, which are condemned by local health authorities after the issuance of a tropical permit of delivery, but while the merchandise is being unloaded, *Held* not dutiable. The law is complied with if the Government receives duty on the entire amount of fruit which comes into the country as such.—*U. S. v. Courtin* (C. C.), T. D. 27970.

ROTTEN FRUIT IN PACKAGES—ALLOWANCE.—In assessing the duty per pound provided on oranges by the tariff act of 1897, allowance should be made for the weight of rotten fruit found on arrival of the merchandise, and it is immaterial whether the importation is in packages rather than in bulk.

The general doctrine regarding the assessment of duty upon importations is that it can be levied upon such articles only as are made dutiable by Congress and are actually imported into the United States. Such portions of imported fruit as arrived in a worthless condition are not dutiable within this rule.—*Stone v. Shallus* (C. C. A.), T. D. 27133; T. D. 26315 (C. C.) affirmed.

Rotten Fruit—Bad Fruit Mixed With Sound.—Imported fruit which has so far decayed as to be absolutely unfit for commerce, and which would be nondutiable if separated from the sound fruit in the same package, does not become dutiable because it is kept with the good fruit and sold with it instead of being separated. If the importer is able to show by satisfactory evidence the quantity which has become valueless through decay, he is entitled to an allowance therefor in the duty.

In ascertaining the allowance which should be made for decay in an importation of fruit in packages, the importer examined at least 1 package out of every 10 in each consignment, and assumed the percentage of loss in that package to prevail through all the other packages. *Held*, that this is a reasonable way of arriving at the percentage of decayed fruit, and that proof of such percentage would justify an allowance on that basis.—*Courtin v. U. S.* (C. C.), T. D. 26998.

Notice of Abandonment of Merchandise.

A controversy growing out of an attempted abandonment of merchandise under section 23, act of June 10, 1890, as amended by the act of May 17, 1898, presents a proper subject of protest.

The proper administration of section 23 requires that the abandonment of merchandise under it must be in writing, and the regulations of the Treasury Department contemplate that it should take the form of a written notice.

HOLDING.—*Held*, that papers and testimony both fail to show that the merchandise was abandoned to the United States within 10 days after entry, as is required by section 23.—T. D. 26308 (G. A. 6022).

Potatoes, Rotten—Nonimportation.—Where, out of an importation of 200 bags of potatoes, 4 bags were shown to have arrived in the United States in a rotten, worthless, and unmerchandiseable condition, *Held*, that these 4 bags should be treated as a nonimportation, and no duty should be assessed on them, following the principle settled by the Supreme Court in *Lawder v. Stone* (187 U. S., 281; 23 Sup. Ct. Rep., 79); contra as to bags of potatoes shown merely to have been partially damaged.—T. D. 26004 (G. A. 5905).

Damaged Fruit—Allowance for Shortage.—To constitute a nonimportation, or shortage, of imported fruit which will justify a pro rata abatement of duties, the merchandise must be rendered valueless and unmerchandiseable, so as not to be a proper subject for abandonment and sale under the provisions of section 23 of the customs administrative act, providing for the abandonment of damaged goods.

In a case relating to imported fruit claimed to be rotten or decayed, the onus is on the importer to show with sufficient certainty, and by satisfactory evidence, the percentage of the merchandise which is destroyed so as to have become valueless. Vague estimates of such percentages, made upon superficial examination, are not sufficient to justify an abatement of duties. A fortiori, no allowance will be made when it is shown that the original packages of such goods were sold in the market without separating the decayed fruit from that which was sound.—T. D. 25552 (G. A. 5779).

Spoiled Fruit—Nonimportation.—Fruit, damaged while in transit to the United States, so as to become utterly worthless and of no pecuniary value, is not to be treated as a dutiable importation, but allowance may be made as if such goods have never arrived at all.

Such allowance, being one not for damage but for short shipment, is to be made irrespective of [the fact] whether the fruit thus decayed amounts to 10 per cent of the entire invoice, so as to allow of abandonment proceedings under section 23, act of June 10, 1890. *Lawder v. Stone* (23 Sup. Ct. Rep., 79), reversing *Stone v. Lawder* (101 Fed. Rep., 710; 41 C. C. A., 621) and affirming G. A. 4222 (T. D. 19774).—T. D. 24444 (G. A. 5344).

Allowance for Decayed Fruit.

SHORTAGE.—The loss of fruit through decay in course of transportation does not constitute a shortage for which an allowance may be made on the ground of nonimportation.

ABANDONMENT.—When such loss amounts to less than 10 per cent, no allowance for damage may be made, being expressly prohibited by section 23, customs administrative act of June 10, 1890. An importation in bulk, included in a single invoice, must be considered as a whole, and the importer is entitled to no allowance for damage to or deterioration concerning the same, and must pay duty on the entire invoice, unless an appropriate portion is abandoned by him under the provisions of said section 23.

RULE OF ABANDONMENT.—When abandonment is made by an importer, on account of damage, under said section 23, the portion abandoned must amount to at least 10 per cent of the total value or quantity of the invoice, and not of the goods, wares, or merchandise as discharged at the port of entry. *Stone v. Lawder* (101 Fed. Rep., 710) and *U. S. v. Bache* (59 id., 762) followed. In re *Schall* (G. A. 656), In re *Dix* (G. A. 3078), In re *Dix* (G. A. 3453), and In re *Lawder* (G. A. 4222) and *Shaw v. Dix* (72 Fed. Rep., 166) reversed directly or impliedly.—T. D. 22520 (G. A. 4776); note T. D. 24444 (G. A. 5344), *supra*.

Shortage and Damage.—The destruction of 101 bags of quebracho extract out of a shipment of 491 bags, caused by "heating, running, and adhering to the skin of the ship," is not damage, within the meaning of section 23, act of June 10, 1890.

Duty should be assessed only on the quantity of merchandise actually landed and coming into the possession and control of the customs officials. *Marriott v. Brune* (9 How., 619) followed.—T. D. 21761 (G. A. 4601).

Fruit Condemned by Board of Health.—Damaged fruit seized and condemned by board of health as unfit for food may be abandoned to Government under section 23, act of June 10, 1890, without its actual delivery to collector.—T. D. 17954 (G. A. 3829).

Rotten Fruit, Allowance For.—Cocoanuts and pineapples imported in bulk, when certain specified portions, less than 10 per cent of the cargoes, were rotten and totally worthless. Section 23, act of June 10, 1890, contemplates a case where there remains something to be abandoned in the sense of being impaired

in value, and is not applicable where there is no value attached to the items to be abandoned.—T. D. 17072 (G. A. 3453).

Total Destruction is Not Damage.—Where merchandise has its value totally destroyed, allowance may be made as shortage, not as damage.—T. D. 16114 (G. A. 3078).

Damage Allowance—Broken Knitting Machine.—Knitting machine imported in four separate cases when it was found that the contents of one case was damaged by breakage. *Held*, that no allowance can be made.—T. D. 14757 (G. A. 2479).

Abandonment of Damaged Goods (Anchovies).—Dried fish and anchovies were imported, the value being separately stated on the invoice. More than 10 per cent of the anchovies were damaged and worthless, but the damaged goods constituted less than 10 per cent of the total of the invoice. *Held*, that to entitle the importer to abandon the merchandise it must constitute 10 per cent or more of the total amount of the invoice.—T. D. 12448 (G. A. 1186).

Decayed Fruit.—Oranges imported and duty paid on 288,000. When the oranges were discharged it was found that 35,700 had decayed and were worthless, being in a mass and in such condition that they could not be abandoned (sec. 23, act of June 10, 1890, and art. 609 of the regulations). *Held*, that it being shown to the satisfaction of the collector and naval officer that oranges originally shipped were destroyed by accident during the voyage the collector is authorized to make an allowance.—T. D. 11373 (G. A. 656).

Damage Allowance on Goods Entered Prior to August 1, 1890.—Window and polished plate glass imported and entry completed prior to July 31, 1890. *Held*, that this section has no application and damage should be allowed under R. S. 2927.—T. D. 10750 (G. A. 303).

Goods Not Damaged Can Not Be Abandoned.—The act of May 17, 1898, applies only to an invoice of goods imported in such condition as would have entitled the importer, under Revised Statute 2927, to claim an allowance for damaged goods; and an importer of goods not damaged can not, by an abandonment of such goods, after they have been seized by the Government for an attempted violation of the customs laws, relieve himself from liability for the duty thereon or recover the duty paid.—U. S. v. One Case of Paintings, Engravings, and Manufactures of Metal, 99 Fed. Rep., 426.

DECISIONS UNDER EARLIER STATUTES PERTAINING TO DAMAGED GOODS.

Allowance for Damage.—The provisions of section 8, act of July 30, 1846 (9 Stat., 42), did not repeal the previous law which authorized allowance for deficiencies and damages incurred during the voyage; it applies to the value merely and not to the quantity of the articles imported.—*Brune v. Marriott*, Tahey, 132; 4 Fed. Cas., 475.

It is not necessary, in order to obtain an allowance for damage to part of a consignment of merchandise, that the claimant should make an affidavit that the entire importation was taken.—U. S. v. 661 Bales of Tobacco, 24 Int. Rev. Rec., 77; 27 Fed. Cas., 1092.

Appraisement of Damaged Goods.—No act of Congress having (1843) designated any form or mode of proof to be made of damage to goods on the voyage, to lay the foundation for an appraisement, the collector is bound to order it on reasonable evidence of such damage. If he does not object to the form of proof when presented, he can not raise such objection at the time when sued for not calling such appraisement.

A request to the collector to have an appraisement by merchants appointed pursuant to the act of 1799, section 52, is to be regarded as an application under the existing law (act of 1823).

Section 52 of the act of 1799 does not require a survey of the goods damaged on the voyage to be made previous to an appraisement of damages for the purpose of an abatement of duties. If such survey is necessary, the master and wardens of the port are not "the proper officers" within the meaning of the act to make it.

After a collector has ordered goods to a public store, because of damage on the voyage of importation, he has no authority to require a survey of such goods in order to their appraisement.

When an appraisement is refused, the deterioration of the goods may be proved by witnesses; and the collector is liable, in an action for damages, to pay the difference between the duties exacted by him and those the goods ought to have been charged with.—*Wight v. Curtis*, 11 Hunt, Mer. Mag., 553; 29 Fed. Cas., 1170.

Appraisement of Damaged Goods Before Entry.—If goods have received damage in the course of the voyage, the importer, in order to obtain a reduction of duties, must demand an appraisal before entry.

If damaged goods are entered before an appraisal is demanded, the importer must pay duties assessed according to the invoice price and he is entitled to no reduction on account of damage to the goods in the course of the voyage.—*Shelton v. Austin*, 1 Cliff., 388; 21 Fed. Cas., 1247.

The damages must be ascertained before the goods are entered (act of Mar. 1, 1823).

Where merchandise received damage during a voyage, proof to ascertain the damage must be lodged at the customhouse of the port where the goods are landed within 10 days after the landing (act of Mar. 2, 1799, 1 Stat., 665, 666).—*Shelton v. The Collector*, 5 Wall., 113.

Claim for Damage Allowance After Duties Have Been Paid.—A claim for the appraisement of goods and the reduction of duty thereon by reason of the damage which they sustained during the voyage of importation may be allowed although not made until after they were entered at the customhouse at their full invoice value and the estimated duties paid thereon. R. S. 2928 has exclusive reference to goods taken from a wreck and does not affect the proceedings under R. S. 2927, a reenactment of section 52, act of 1799. *Shelton v. The Collector* (5 Wall., 113), so far as it conflicts with this ruling, is overruled. *U. S. v. Phelps* (20 Blatchf., 129; 27 Fed. Cas., 523), reversed.—*U. S. v. Phelps*, 107 U. S., 320.

One entry was made of fruit imported in a vessel, which fruit belonged to several owners and was embraced in several invoices. The duties were estimated at \$4,648, and deposited and the goods delivered. Afterwards a damage allowance for loss by decay on the voyage was applied for. The report showed that the damage sustained by various lots of fruit was more than 25 per cent of the quantities in such lots but that the damage on all the fruit imported by the vessel was less than 25 per cent. The collector, by allowing the damage on the lots which were damaged more than 25 per cent liquidated the duties at \$270.40 less than amount deposited and refunded the \$270.40. Afterwards the collector reliquidated the duties at \$4,648, refusing to allow any damage because it did not exceed 25 per cent of all the fruit covered by the entry. Suit brought for the \$270.40. Verdict in the district court for the defendants. On writ of error held that under R. S. 2931 the first liquidation was not conclusive as to the United States.

The United States are entitled to recover according to the last liquidation.

The defendants could not be allowed to give evidence to show that the decision of the collector in the last liquidation was erroneous.—U. S. v. Phelps, 17 Blatchf., 312; 27 Fed. Cas., 521.

Y. That whenever it shall be shown to the satisfaction of the Secretary of the Treasury that, in any case of unascertained or estimated duties, or payments made upon appeal, more money has been paid to or deposited with a collector of customs than, as has been ascertained by final liquidation thereof, the law required to be paid or deposited, the Secretary of the Treasury shall direct the Treasurer to refund and pay the same out of any money in the Treasury not otherwise appropriated. The necessary moneys therefor are hereby appropriated, and this appropriation shall be deemed a permanent indefinite appropriation; and the Secretary of the Treasury is hereby authorized to correct manifest clerical errors in any entry or liquidation for or against the United States, at any time within one year of the date of such entry, but not afterwards: *Provided*, That the Secretary of the Treasury shall, in his annual report to Congress, give a detailed statement of the various sums of money refunded under the provisions of this Act or of any other Act of Congress relating to the revenue, together with copies of the rulings under which repayments were made.

SEC. 28.

Subsec. 32: That whenever it shall be shown to the satisfaction of the Secretary of the Treasury that, in any case of unascertained or estimated duties, or payments made upon appeal, more money has been paid to or deposited with a collector of customs than, as has been ascertained by final liquidation thereof, the law required to be paid or deposited, the Secretary of the Treasury shall direct the Treasurer to refund and pay the same out of any money in the Treasury not otherwise appropriated. The necessary moneys therefor are hereby appropriated, and this appropriation shall be deemed a permanent indefinite appropriation; and the Secretary of the Treasury is hereby authorized to correct manifest clerical errors in any entry or liquidation for or against the United States, at any time within one year of the date of such entry, but not afterwards: *Provided*, That the Secretary of the Treasury shall, in his annual report to Congress, give a detailed statement of the various sums of money refunded under the provisions of this Act or of any other Act of Congress relating to the revenue, together with copies of the rulings under which repayments were made.

SEC. 24. That whenever it shall be shown to the satisfaction of the Secretary of the Treasury that, in any case of unascertained or estimated duties, or payments made upon appeal, more money has been paid to or deposited with a collector of customs than, as has been ascertained by final liquidation thereof, the law required to be paid or deposited, the Secretary of the Treasury shall direct the Treasurer to refund and pay the same out of any money in the Treasury not otherwise appropriated. The necessary moneys therefor are hereby appropriated, and this appropriation shall be deemed a permanent indefinite appropriation; and the Secretary of the Treasury is hereby authorized to correct manifest clerical errors in any entry or liquidation for or against the United States, at any time within one year of the date of such entry, but not afterwards: *Provided*, That the Secretary of the Treasury shall, in his annual report to Congress, give a detailed statement of the various sums of money refunded under the provisions of this Act or of any other Act of Congress relating to the revenue, together with copies of the rulings under which repayments were made.

SEC. 1. * * * *And provided also*, That this Act shall not affect the refund of excess of deposits based on estimated duties nor prevent the correction of errors in liquidation, whether for or against the Government, arising solely upon errors of fact discovered within one year from the date of payment, and, when in favor of the Government, brought to the notice of the collector within ten days from the date of discovery.

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June 22, 1874 SEC. 21. That whenever any goods, wares, and merchandise shall have been entered and passed free of duty, and whenever duties upon any imported goods, wares, and merchandise shall have been liquidated and paid, and such goods, wares, and merchandise shall have been delivered to the owner, importer, agent, or consignee, such entry and passage free of duty and such settlement of duties shall, after the expiration of one year from the time of entry, in the absence of fraud and in the absence of protest by the owner, importer, agent, or consignee, be final and conclusive upon all parties.

DECISIONS UNDER THE ACT OF 1913.

Clerical Error, What Not Manifest.—Where the consular invoice for cloth showed the number of units of length, the price per unit, and the value as the product of the two, without stating whether the unit was yards or meters or the price for a yard or a meter, and the importers, having declared accordingly, claim afterwards that the consular invoice stated the measurement in yards and the price for a meter, if there was error, it was not manifest clerical error.—*De Liagre & Co. v. U. S. (Ct. Cust. Appls.)*, T. D. 35989; G. A. Ab. 37796 affirmed.

The entrants at the time of entry had before them the shippers' invoices, upon which two prices were indicated, one purporting to be the unit cost price and the other the unit market value, and intentionally entered the merchandise at a value corresponding to such market value. *Held*, not to make a case of manifest clerical error under paragraph Y of section 3 of the act of 1913.—*U. S. v. Kuppenheimer & Co. et al. (Ct. Cust. Appls.)*, T. D. 35925; G. A. Ab. 37948 reversed.

Liquidation Pending Appeal.—The collector has no power to liquidate pending appeal to reappraisement. A liquidation by the collector pending appeal to reappraisement is not voidable merely, but void. Such action does not constitute a "settlement of duties" within the purview of section 21, chapter 24, act of June 22, 1874, which provides that a settlement of duties shall be final a year after entry in the absence of fraud and in the absence of protest.

The alleged absence of samples of the merchandise at the time of reappraisement thereof by the board of three general appraisers may not be urged before this court when the point is not raised by the protest.

The alleged absence of samples of the merchandise at the time of reappraisement thereof by the board of three general appraisers may not be urged before this court when an examination of samples by the board was expressly waived by a stipulation of the parties, duly entered of record.—*Stubbs v. United States (Ct. Cust. Appls.)*, T. D. 36967.

Statute of Limitations—Fraud.—Section 21 of the act of June 22, 1874 (18 Stat. L., 190), which provides "such settlement of duties shall, after the expiration of one year from the time of entry, in the absence of fraud and in the absence of protest by the owner, importer, agent, or consignee, be final and conclusive upon all parties," is a statute of limitations. See *Benziger Bros.' case*, G. A. 6224 (T. D. 26898). No protest having been filed, and no fraud or presumption of fraud being disclosed by the record, reliquidation of an entry more than a year after the original liquidation and more than two years after entry is void.—T. D. 35321 (G. A. 7712).

DECISIONS UNDER THE ACT OF 1909.

Reliquidation.—This is the second time this case has been before the board. Certain fish were entered by the importers on December 21, 1912. The collector liquidated the entry on January 13, 1913, assessing duty on the merchandise

at 30 per cent under the provisions of paragraph 270, tariff act of 1909. On January 25 a protest was filed claiming that the merchandise was dutiable at three-fourths of 1 per cent per pound under paragraph 273. The collector allowed this protest, and on January 27, 1913, reliquidated the entry accordingly. On March 31, 1913, the Treasury Department refused to approve his action and directed that the protest be forwarded to the Board of General Appraisers. On December 19, 1913, the Board of General Appraisers held that the protest was improperly transmitted to the board and dismissed the same. The collector thereupon, on December 26, 1913, again reliquidated the entry, assessing duty at 30 per cent, as in the original liquidation. Against this last liquidation this protest was filed.

The collector of customs is a statutory officer, and whatever act he performs must be performed in accordance with the law of Congress. His statutory direction providing for the reliquidation of an entry is to be found in section 21 of the act of June 22, 1874.

This statute has many times been held to be a statute of limitations. As such it limits the collector's right to reliquidate in the absence of fraud or a protest filed to within "one year from the time of entry." *Cassel v. U. S.* (146 Fed., 146; T. D. 27116).—Ab. 36261 (T. D. 34698).

Reliquidation—Fraud.

SPECIAL DEPUTY COLLECTOR MAY LIQUIDATE AND RELIQUIDATE.—The powers and duties of collectors of customs are equally vested in their special deputies; and the special deputies' right and power to liquidate and reliquidate are without question.

COLLECTOR'S POWER TO LIQUIDATE AND RELIQUIDATE.—The power of a collector of customs to liquidate and reliquidate is vested in him by statute and unlimited except by affirmative law. This has been recognized by consistent, persistent, and continuous administrative practice, legislative enactment, and judicial decision since the institution of his office.

COLLECTOR'S POWER TO LIQUIDATE—TIME.—There never has been, and is not now, a time limit within which the original liquidation must be made.

COLLECTOR'S POWER TO RELIQUIDATE—LIMITATION.—The first limitation upon the collector's power to reliquidate was section 21 of the act of June 22, 1874 (18 Stat. L., 186).

COLLECTOR'S POWER TO RELIQUIDATE WHEN GOODS HAVE GONE BEYOND HIS CONTROL.—The power of the collector to reliquidate when the goods have gone beyond his possession or control has been administratively, legislatively, and judicially recognized from the earliest time.

COLLECTOR'S POWER TO RELIQUIDATE WITHIN YEAR FROM ENTRY.—The collector's power to reliquidate within a year after entry has received uniform administrative, legislative, and judicial recognition prior to and since the passage of the act of June 22, 1874 (18 Stat. L., 186).

COLLECTOR'S POWER TO RELIQUIDATE AFTER YEAR FROM ENTRY IN CASE OF PROTEST.—The collector's power to reliquidate after the expiration of a year from entry in case of protest has received uniform administrative, legislative, and judicial recognition prior to and since the passage of the act of June 22, 1874 (18 Stat. L., 186).

COLLECTOR'S POWER TO RELIQUIDATE RECOGNIZED IN ACT OF MARCH 3, 1875 (18 STAT. L., 469).—The act of March 3, 1875 (18 Stat. L., 469), "restricting the refunding of customs duties," etc., implies that the collector has an inherent general power to reliquidate.

COLLECTOR'S POWER TO RELIQUIDATE AFTER YEAR FROM ENTRY IN CASE OF FRAUD.—The collector's power to reliquidate after the expiration of a year

from entry in case of fraud stands upon the same ground as in case of protest; and, like it, has received uniform administrative, legislative, and judicial recognition.

CONSTRUCTION—"ABSENCE OF FRAUD," SECTION 21, ACT OF JUNE 22, 1874 (18 STAT. L., 186).—The statute makes the liquidation final "in the absence of fraud." This does not necessitate a finding of fraud by the collector to justify reliquidation, but directs him not to reliquidate in "the absence of fraud." If he suspects fraud, he can not say that fraud is absent. A well-founded suspicion of fraud is sufficient to move him to reliquidation.

COLLECTOR'S DECISION, CONTEST OF.—The law restricts a collector's findings to rate and amount of duty. He can make no conclusive finding as to fraud or anything else than rate and amount of duty. A reliquidation involves nothing except a different finding as to rate and amount of duty.

CONSTRUCTION—"ABSENCE OF FRAUD," SECTION 21, ACT OF JUNE 22, 1874 (18 STAT. L., 186).—The words "in the absence of fraud and in the absence of protest by the owner, importer, agent, or consignee" do not restrict the fraud to the owner, importer, agent, or consignee.

EVIDENCE—ADMISSIBILITY.—In the trial before the Board of General Appraisers of a protest by F. Vitelli & Son against a reliquidation on account of fraud alleged in the original liquidation indictments and records of acquittal in prosecutions by the United States against Joseph Vitelli for such frauds, without evidence connecting F. Vitelli & Son with Joseph Vitelli, have no probative force, and were properly excluded by the Board of General Appraisers.

COLLECTOR'S CONTROL OF FRAUDULENT RETURN BY WEAIGHER.—That a collector may set aside a fraudulent return by a weigher can not be questioned.

FRAUD VITIATES.—Fraud vitiates whatever it touches, and it may be said that a liquidation induced by fraud is no liquidation and a fraudulent weigher's return no weigher's return.

EVIDENCE—PRESUMPTION—BURDEN OF PROOF.—In the trial before the Board of General Appraisers of a protest against a reliquidation made more than a year after entry the legal presumption is, as in all cases, that the collector of customs acted within the powers conferred upon him by law, and the burden is on the protestant to show the invalidity of the reliquidation.

EVIDENCE—PRESUMPTION—BURDEN OF PROOF.—In the trial before the Board of General Appraisers of a protest against a reliquidation made more than a year after entry evidence that the goods had been bought and sold by importers at weights greater than the entered ones is sufficient to establish a prima facie case of fraud and put upon the protestants the burden of overcoming it.

EVIDENCE—BURDEN OF PROOF.—The burden of proving the material allegations of the complaint (protest) is on the plaintiff (protestant).

COLLECTOR'S POWER TO TAKE UNOFFICIAL EVIDENCE AS TO WEIGHTS.—There is no doubt, at least in cases where the weigher did not follow the law or was guilty of fraud, that the collector can proceed, or direct the weigher to proceed, to ascertain from the accounts of merchants to whom the merchandise was sold its true weights and accordingly liquidate.

DUE PROCESS OF LAW.—The customs administrative procedure, in case of reliquidation for fraud more than one year after entry, gives the importer ample notice and abundant opportunity to defend. The record shows that such notice and opportunity were had in these cases.—*Vitelli & Son v. U. S. (Ct. Cust. Appls.)*, T. D. 36544; (*G. A. Ab. 36340*) T. D. 34742 and (*G. A. Ab. 36544*) T. D. 34744 affirmed.

SECTION 21, ACT OF 1874.—There is no limitation fixed by section 21, act of 1874, except a limitation which arises only in the absence of fraud and in the absence of protest. So far as the section contains implied authority for reliqui-

dition, it imports the right to reliquidate in case of fraud and in case of protest after the lapse of one year equally with the right so to reliquidate within the period of a year.

FRAUD—BURDEN OF PROOF.—The collector found the existence of fraud as a fact. It was not incumbent on the Government in the first instance to introduce evidence tending to support the correctness of the reliquidation by the collector on the ground of fraud. In this case, as in others, the burden was placed on the importer to show by proof that the collector's action was erroneous.—*U. S. v. Vitelli & Son* (Ct. Cust. Appls.), T. D. 34194; (G. A. 7418) T. D. 33115 reversed.

RELIQUIDATION, GOODS HAVING GONE INTO CONSUMPTION.—The protest here raises the single question as to the regularity of the collector's action when taken by the direction of the Secretary of the Treasury, and within one year, the goods having in the meantime gone into consumption. The Secretary had authority under section 2652, Revised Statutes, to give the directions; the reliquidation was made within a prescribed period fixed by law (*U. S. v. Hobbs*, 3 Ct. Cust. Appls., —; T. D. 32567); and there was no error.

Prior to the enactment of this statute (act June 22, 1874) there had been no limitation upon the right of the collector to reliquidate. *U. S. v. Calhoun* (184 Fed. Rep., 501).

This statute placed a limitation which excluded reliquidation after one year, and by clear implication, it would seem, recognized and authorized a reliquidation within a year.—*Hawley & Letzerich v. U. S.* (Ct. Cust. Appls.), T. D. 33037; (G. A. Ab. 28053) T. D. 32379 affirmed.

Reduction of Entered Value—When Not Allowed.

The entry, the invoice, and the replace invoice submitted to the Secretary of the Treasury all showed that the value of the wool exceeded 12 cents per pound, and there was no indication of error in stating the value or the charges to be deducted therefrom to make actual market value; and the entry itself, once made and verified, could not be corrected by the importer or the collector. The correction of the entry was properly denied on the papers submitted. *U. S. v. Zuricaldy* (71 Fed., 955) distinguished.—*Hampton, jr., & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 34093; (G. A. Ab. 31984) T. D. 33338 affirmed.

DECISIONS UNDER THE ACT OF JUNE 10, 1890.

Reliquidation After One Year.—Under act June 22, 1874, section 21 (18 U. S. Stat. L., 190), which provides that when imports shall have been passed free of duty, and that, when duties shall have been liquidated and paid, such passage or settlement shall, after one year, be conclusive, etc., a collector may liquidate duties before or after one year from entry, but after once liquidating, he can not, in the absence of fraud or protest, reliquidate after a year from the date of entry.—*Pacific Cresoing Co. v. U. S.* (C. C.), T. D. 32746.

Refunds to Importers Under Decisions by Board of General Appraisers and Circuit Court.—The refunding of moneys in compliance with decisions of the Board of General Appraisers and the circuit court is, under section 24, customs administrative act of 1890, a function of the Treasury Department, and there is, therefore, no foundation for a suit against the collector of customs to restrain him from disposing of such moneys.—*Joannidis v. Loeb* (C. C.), T. D. 31925.

Statute of Limitations.—Where an assessment had been protested and the entry had been retained for reliquidation, and on January 3, 1907, the collector proceeded to reliquidate the invoice in question and then again on December 4, 1908, would reliquidate the same invoice, a second reliquidation was barred. The protest had been satisfied by the reliquidation of January 3, 1907, the

statute of limitations having begun then to run and more than one year having elapsed. *U. S. v. Leng* (18 Fed. Rep., 15).—*U. S. v. Goldberg* (Ct. Cust. Appls.), T. D. 31664; (G. A. Ab. 24520) T. D. 31182 affirmed.

Reliquidation to Correct Error.

ONE YEAR AFTER ENTRY.—A manifest clerical error in a liquidation made within one year after original entry can not be corrected more than one year after such entry, because not within the provision in section 24, customs administrative act of 1890, authorizing the Secretary of the Treasury to correct such errors "in any liquidation within one year from the date of such entry;" the term "entry" as there used refers to the document filed by the importer on entry.

LATEST LEGISLATIVE DELIVERANCE.—Inasmuch as section 24, customs administrative act of 1890, relating to the correction of "manifest clerical errors," is the latest legislative deliverance on that subject and relates most specifically thereto, it controls over section 21, act of June 22, 1874 (18 Stat., 190), relative to the "settlement of duties," and section 1, act March 3, 1875 (18 Stat., 469), relative to "correction of errors in liquidation."

LIQUIDATING ERROR—MISCALCULATION.—Where in liquidation the clerk miscalculated the number of square yards in the fabric imported, this constituted a "manifest clerical error," within the meaning of section 24, customs administrative act of 1890, permitting the correction of such errors within one year after entry.—*U. S. v. Vandegrift* (C. C. A.), T. D. 30251; T. D. 29430 (C. C.) and (G. A. 6737) T. D. 28848 affirmed.

The provision in section 1, act of March 3, 1875 (18 Stat., 469), that "the act shall not prevent the correction of errors in liquidation, whether for or against the Government, arising solely upon errors of fact discovered within one year from the date of payment," is only a saving clause relative to the operation of the act of which it is a part, and did not repeal or modify section 21, act of June 22, 1874 (18 Stat., 190), which prescribed finality for the "settlement of duties after the expiration of one year from the time of entry." Therefore the reliquidation of an entry is void if made more than a year after the filing of the first entry paper, though within a year after the payment of duty.—*U. S. v. Vandegrift* (C. C.), T. D. 29430; (G. A. 6737) T. D. 28848 affirmed.

Clerical Error—Omission From Invoice.—Shippers of an importation failed to note on the invoice that the value included certain nondutiable charges. *Held*, that allowance should be made in the dutiable value accordingly, on the ground of clerical error.—*Delapenha v. U. S.* (C. C.), T. D. 30148; (Ab. 18815) T. D. 28977 affirmed.

Clerical Error—Entry on Wrong Invoice.—Importers erroneously made entry of an importation on the basis of an invoice relating to another importation having a higher value. The merchandise was appraised at such higher value, and the right to reappraisal proceedings was waived by the importers under a misapprehension. *Held*, that duty might properly be assessed on the basis of the value shown by the right invoice.—*Rice-Stix Dry Goods Co. v. U. S.* (C. C.), T. D. 28999; Ab. 13984 (T. D. 27801) reversed.

Refund of Duties Pending Appeal—Practice.—A refund to an importer of duties on imported merchandise by order of the Treasury Department operates as a satisfaction of his claim; and, on the report of the collector to that effect and the written application of the importer, the protest will be ordered dismissed by the board.—T. D. 28919 (G. A. 6747).

Clerical Error.

DEFINITION—OVERVALUATION.—"Clerical error" implies negligence or carelessness by a clerk, writer, or copyist; it assumes that the mistake, negligence,

or carelessness is that of one engaged in the subordinate service of transcription, copying, or comparison—a labor not requiring original thought. Where imports are incorrectly invoiced at a value higher than the actual price or the price paid, this constitutes a clerical error from the consequences of which the importer should be relieved.

CARELESSNESS NOT GROUND FOR DENYING RELIEF.—The fact that a clerical error was due to carelessness or neglect is no ground for denying relief to an importer who has incurred excessive duties on account of the error.—*Morimura v. U. S. (C. C.)*, T. D. 28866; Ab. 16819 reversed.

Reliquidation.

SECTION 21, ACT OF JUNE 22, 1874, A STATUTE OF LIMITATIONS.—There is no limit of time within which collectors may reliquidate an entry, except the limitations prescribed by section 21 of the act of June 22, 1874 (18 Stat., 190), which has been held to be in the nature of a statute of limitations.

TIME DURING WHICH A RELIQUIDATION MAY BE MADE.—Said section 21, among other limitations, authorizes a reliquidation to be made more than one year after the entry of the merchandise, provided such merchandise has not been delivered to the owner, importer, agent, or consignee, but is still constructively in the possession of the Government.

PURPOSE OF SAID SECTION 21.—The purpose of said section 21 would seem to be (other conditions being complied with) to permit all errors and mistakes lawfully capable of correction by the collector or surveyor of customs to be corrected by reliquidation so long as the merchandise under consideration remains in possession of the Government.—T. D. 27887 (G. A. 6536).

FINALITY OF LIQUIDATION.—Section 21, act of June 22, 1874, providing that the settlement of duties shall be final “after the expiration of one year from the time of entry,” etc., means one year from the presentation of the entry to the collector rather than from the completion of the entry by liquidation and payment of duties.

RELIQUIDATION AS TO GOODS NOT COVERED BY PROTEST.—While protests were pending with respect to a portion of the goods covered by an entry, and at a time more than one year after entry, the collector reliquidated the entry at a higher rate as to items of merchandise not covered by the protests. *Held*, that this reliquidation was too late and illegal, under section 21, act of June 22, 1874, providing that the “settlement of duties shall, after the expiration of one year from the time of entry, in the absence of fraud and in the absence of protest, be final and conclusive.” In the absence of fraud the collector could not, after one year, reliquidate the entry as to merchandise not covered by the protest; the pendency of a protest relating to a part of the merchandise on the entry did not give him the right to reliquidate on other merchandise.—*Cassel v. U. S. (C. C.)*, T. D. 27116; (G. A. 5962) T. D. 26147 reversed.

CORRECTION AFTER LIQUIDATION.—Where entry of certain merchandise was inadvertently made on an invoice which, through clerical error, stated the value incorrectly in that it failed to show that the value given included certain non-dutiable charges, this resulting in the assessment of a higher rate of duty than would otherwise have been applicable, and the first notice of the error received by the importer was after the liquidation of the entry at the increased rate, *Held*, that the real value of the merchandise might be shown and the rate of duty corrected accordingly.—*Wilmerding v. U. S. (C. C.)*, T. D. 26391; G. A. Ab. 3181 (T. D. 25677) reversed.

BOARD OF UNITED STATES GENERAL APPRAISERS HAS POWER TO CORRECT ERRORS OR MISTAKES IN INVOICES.—The Board of United States General Appraisers, by virtue of its statutory power to examine and decide all cases properly before it, has power to correct clerical errors or mistakes in an invoice when the same

is necessary to a just administration of the customs law. *Brown Sons & Co.'s case*, G. A. 5077 (T. D. 23519), *U. S. v. Benjamin et al.* (72 Fed. Rep., 51), and *Gillespie et al. v. U. S.* (124 Fed. Rep., 106).—T. D. 25890 (G. A. 5877).

Reliquidation Does Not Include Reappraisement.—Section 21 of the act of June 22, 1874, allowing the collector to reliquidate entries in certain cases, does not authorize him to make a reliquidation by raising the values of goods which have been finally ascertained by lawful appraisement. *Beard v. Porter* (124 U. S., 437), *Gandolfi v. U. S.* (74 Fed. Rep., 549), *In re Ford* (G. A. 3167) followed.—T. D. 18617 (G. A. 4015).

Manifest Clerical Error in Invoice, Excessive Valuation a.—Linen fabrics entered at 18, 22, and 24 silver yens per piece of 20 yards, which was the value per piece of 40 yards. *Held*, to be a clerical error and the collector authorized to reliquidate.—T. D. 17070 (G. A. 3451).

Error in Invoice Not Manifest.—Steel billets invoiced and entered at £6 9s. per ton. Corrected invoice shows value £6 8s., 1 shilling in the original having been "cartage by rail," a nondutiable charge. The appraised value was final in the absence of an appeal for reappraisement when the corrected invoice might have been produced, and we can not now inquire into value. There does not appear to be a manifest clerical error in the invoice entry or appraisement.—T. D. 16961 (G. A. 3389).

Fraudulent Entries, Reliquidations of, After One Year.—Grain bags admitted free under paragraph 493, act of 1890, on entries liquidated on September 14, 1892, and January 11, 1893. Under instructions from the Secretary the entries were reliquidated in October, 1894, and duty assessed under paragraph 365 at 2 cents a pound. It was shown that the bags were entered at Boston before the vessel on which they were claimed to have been exported had cleared at Antwerp. *Held*, that the false statement that the bags were exported on a certain steamer constituted a fraud within the meaning of section 21, act of June 22, 1874, and that the reliquidation after one year was authorized.—T. D. 16338 (G. A. 3167).

Excessive Weight On Invoice Not a Manifest Clerical Error.—Woolen or worsted cloth imported in nine cases invoiced at 276½ pounds. The case ordered to the public store for examination was found to weigh 258½ pounds and the boards and paper 18 pounds. The remainder of the goods were called for but could not be produced. The importer claimed that in making up the invoice the weight of the boards, etc., was added and that this was a manifest clerical error. Protest overruled.—T. D. 14633 (G. A. 2391).

Manifest Clerical Errors in Pro Forma Invoices.—An error in translation is a clerical error. Such an error found to be a manifest clerical error.

A pro forma invoice stands in the place of a certified invoice and a manifest clerical error therein can be corrected after entry.—T. D. 13503 (G. A. 1805).

Clerical Error in Original Consular Invoice.—The original consular invoice had this statement: "The following charges are not included in the above prices." The importer produced a duplicate which stated: "The following charges are included in the above prices." *Held*, to be a clerical error and correction ordered.—T. D. 13290 (G. A. 1670).

Reliquidations by Collectors Within One Year From Entry.—The collector may reliquidate within one year. The provision that the decision of the collector shall be final and conclusive does not apply to the Government.—T. D. 12655 (G. A. 1304).

Clerical Error.—Merchandise entered on pro forma invoice as of the value of 3,000 francs. Invoice received showing value to be 1,196.70 francs before

the goods had been taken from the public store. *Held*, not to be a clerical error and protest overruled.—T. D. 12538 (G. A. 1222).

Clerical Error—Excessive Valuation in Invoice.—Blueberries invoiced and entered at \$2.75 per case and duties paid. Corrected consular invoice gave the value at \$1.34 per case, which was the value. *Held*, (1) not to be strictly a clerical error, and (2) that the protest is an attempt to collaterally impeach the appraised value, which, in the absence of fraud, is final and conclusive.—T. D. 12523 (G. A. 1207).

Protest Will Not Lie Against Valuation.—The invoice gives per se value of merchandise and also packing charges. The importer claims that these charges have already been included in per se value. *Held*, that this is not a manifest clerical error; that the remedy is not by a protest, but by an appeal for reappraisal.—T. D. 12460 (G. A. 1198).

Goods invoiced at a certain value less given charges, leaving a balance which is given, but the entry gives the total value, making no deduction for charges. *Held*, not a manifest error.—T. D. 12452 (G. A. 1190).

Clerical Error in Invoice.—The value stated on the invoice was £661 2s. 4d., and following this were charges not included in the foregoing prices, wrappers, boxes, etc., £47 12s. 7d. The entry and appraised value was £661 2s. 4d. The collector added to the charges £47 12s. 7d. and assessed duty on £780 14s. 11d. *Held*, (1) that the appraiser's notation if correct was equivalent to reporting that the entered value, the invoice value, and the dutiable value agreed and were correct; (2) that it is the province of the collector to determine for himself what is the invoice value; (3) his decision in this respect is not in the nature of an appraisement and is not subject to reappraisal; (4) the remedy of the importer was not an appeal for reappraisal but a protest, and the question on its merits is properly before the board on protest; (5) it appearing that a series of invoices of similar goods, both prior and subsequent to this entry, end with the statement "charges included in the foregoing," it is held that there was a clerical error in the insertion of the word "not" in the sentence "charges not included in the price of the goods."—T. D. 11880 (G. A. 871).

Charges Not Appearing in Invoice.—Goods invoiced entered and appraised at a certain price. The importer afterwards presented what he claimed was a correct invoice, showing a less value and claiming that the cost of inland transportation from London to Liverpool was included in the original invoice. *Held*, that the error, if there was one, was due to the failure of the vendor to state that inland transportation, a nondutiable charge, was included in the invoice and that this was not a clerical error. (T. D. 11679 (G. A. 784).

Excessive Additions to Value on Entry.—The merchandise was invoiced at a price which included cost of coverings and all charges and expenses, the value of the cartons being separately specified on the invoice. The importers in making entry added the items of charges and cartons a second time. *Held*, that excessive additions to value on entry are not clerical errors.—T. D. 10533 (G. A. 183).

DECISIONS UNDER EARLIER STATUTES PERTAINING TO SAME SUBJECT MATTER.

Amendments to Writ After Expiration of Time Limit.—After suit brought, the time fixed by the statute of limitations for an action to be brought in expired, and certain amendments were made in the writ after the time fixed by the statute. *Held*, that this did not bar the right of action by the plaintiffs

where no new cause of action was introduced by amendments.—*McGlinchy v. U. S.*, 4 Cliff., 312; 16 Fed. Cas., 118.

Entry.—The entry alluded to in this section is the original entry provided for, regulated, and defined by sections 2785 to 2790, inclusive.—*U. S. v. Seidenberg*, 17 Fed. Rep., 227.

Original Liquidation Not Required to be Made Within Any Period.—Iron ore was imported in 1881, a certain sum being then paid as duties after the appraiser had raised the valuation. In 1890 the collector decided that an additional amount was due, and an action was brought to recover the same. The importers claimed that their original payment was a liquidation and that the action was barred in one year thereafter. *Held*, that the liquidation was not complete until the collector had acted in the matter, and that there was no provision requiring him to liquidate within any particular time or to give notice to the importer thereof.—*U. S. v. De Rivera (C. C.)*, 73 Fed. Rep., 679.

This section does not give rise to a presumption that the collector made a liquidation within one year after entry, nor require a liquidation to be made within one year, but only prevents a reliquidation after a year has elapsed from the entry.—*Gandolfi v. U. S. (C. C. A.)*, 74 Fed. Rep., 549.

This section (21) does not prescribe any limitation of time within which the collector may make his original liquidation of the entry. It affects only reliquidations.—*Doble v. U. S.*, 119 Fed. Rep., 152.

Presentation of Claim to Customs Officer Before Expiration of Time Limit.—Importations were made by A and others whereon they paid, under protest, certain duties unlawfully exacted by the collector. The collector, when sued for the excess of duties, pleaded the statute of limitations; whereupon A filed his bill, setting forth that his attorney was informed by an officer of the customhouse that by the rules and practice of the Treasury Department the presentation of A's claim to the auditor or refund clerk would prevent the statute from running, and that the statute, if the claims were so presented, could not and would not be interposed as a defense in case suits were brought to recover said excess; that the collector, though he disclaimed any control in the matter, declared his confidence in the knowledge and experience of the officer who made such statement, and expressed his opinion as concurring therein; that A did present his claim to the auditor or refund clerk, as suggested; and that, relying upon the prior action of the Secretary in recognizing claims of like nature, and upon said statements and opinion of the officer of the customhouse, and the concurrence of the collector therein, he and others had refrained from suing until the bar of the statute had attached. He therefore prayed that the collector be enjoined from pleading it in any of the actions at law for such excess. *Held*, that the matters alleged are not sufficient to estop the collector from pleading the statute.—*Andreae v. Redfield*, 98 U. S., 225.

Reliquidation Under Act of February 8, 1875.—Goods entered September 29, 1874. Liquidated and duties paid October 28, 1874. Goods warehoused, and on January 5, 1875, withdrawal entry made. Goods delivered and duties paid February 9, 1875. The question as to whether the goods were in bonded warehouse on February 8, 1875, within the meaning of the act of that date can not be raised on a suit by the United States to recover the increased duties on a reliquidation made on April 27, 1875, because the collector may reliquidate the entry after the duties have been paid on the original liquidation and the goods delivered to the importer.

Section 21, act of June 22, 1874, contains no limitation upon the time when a suit may be brought by the United States to recover duties on a reliquidation of an entry.—*U. S. v. Comarota*, 2 Fed. Rep., 145.

Reliquidation After One Year.—This section was designed to apply to past liquidations; and a reliquidation, in the absence of fraud, can not be made more than one year after settlement according to a prior liquidation.

The payment in this case having been made before the act of June 22, 1874, the one year commenced to run from the time the act took effect.—U. S. v. Campbell, 10 Fed. Rep., 816.

Merchandise was delivered to an importer after he had paid the duties on its first liquidation. Within a year after the entry the local appraiser made a reappraisal and a second report, from which the importer appealed within such year. The board of reappraisement sat after the year, the importer was present, the merchandise was not reappraised because it could not be found, and it was not examined and the fees of the merchant appraiser were not paid by the importer. The second report of the local appraiser increased the value of the goods from the invoice values, disallowed a discount which appeared on the invoice, and changed the rate of duty on some of the merchandise. The collector, after the expiration of the year, made a new liquidation by disallowing the discount and changing the rate of duty, as suggested by the local appraiser. *Held*, that under section 21, act of 1874, the first liquidation was final and conclusive against the United States, as it did not appear that the second liquidation was based on any increase in the value of the merchandise, or that the disallowance of the discount and the change in the rate of duty depended on such increase, or were involved in any proper action of the local appraiser in appraising the merchandise, or were matters which could not have been finally acted upon by the collector at any time within a year from the entry as well as any other time, and without any reference to any increase in the appraised value of the goods.

The "protest" referred to in this section is a protest against the prior "settlement of duties," which the section proposes to declare to be final after the expiration of the year.—Beard v. Porter, 124 U. S., 437, 442.

This section is in the nature of a statute of limitations as respects the right of the Government to reliquidate duties, and limits that right, if the duties have been paid, to one year after entry, in the absence of fraud or protest, and any such reliquidation after that period is void; but if such reliquidation was lawfully made within a year the statute is not a limitation upon a suit to collect the duties accordingly, and such suit may be brought at any time afterwards.

Where, in January, February, and April, 1880, three entries on importations were made and the estimated duties paid at the time of entry, but the duties were liquidated at a larger sum, which on appeal to the Secretary was set aside and the importer's classification sustained and the duties paid accordingly; and afterwards the Secretary gave a contrary order to the collector, who again, in April, 1881, reliquidated the duties according to his first liquidation, and the Government thereupon sued for the excess, *held*, that the payment of the duties on the first two entries had become a binding settlement by the lapse of a year before the last liquidation under section 21, act of June 22, 1874, but not as to the third entry; *held*, also, as respects the third entry, that the decision on appeal in favor of the importer, under Revised Statutes 2931, was binding and conclusive upon the Government, and that the subsequent order of the Secretary and the last liquidation are invalid and void.

The collector is the special statutory officer for the liquidation of duties in the first instance, and the Secretary's jurisdiction of any particular liquidation is appellate only.

The hearing and decision of appeals by the Secretary is a quasi judicial proceeding before a special statutory tribunal, and their effect is to be determined by the rules ordinarily applicable to such tribunals.

The words "in the absence of protest" in the act of June 22, 1874, section 21, mean in the absence of any existing protest pending and in force at the reliquidation, and not a protest which has become spent through a previous liquidation of duties in accordance with it.

Section 1 of the act of March 3, 1875, does not authorize a reliquidation against an importer in the absence of any pending protest and appeal, except for errors arising solely on matters of fact, and not for an erroneous construction of the tariff law or classification of goods.—*U. S. v. Leng*, 18 Fed. Rep., 15.

Reliquidation—Limitation Dates from Entry.—The year within which the collector can reliquidate the duty runs from the time of the presentation to the collector of the entry by the importer, and not from the time of the first liquidation of the duty.

After the collector has liquidated the duty, and the duty has been paid and the goods delivered to the importer, no part of the same nor any samples being retained by the collector, he has no power to make a reliquidation upon a subsequent report of an appraiser who never saw the goods.—*U. S. v. Frazer*, 10 Ben., 347; 25 Fed. Cas., 1207.

Suit Against Collector, Act of February 26, 1845.—Duties paid in 1843 and 1844. From the passage of the act of March 3, 1839, to the act of February 26, 1845, the collector could not be sued. The importer brought suit February 13, 1850, to recover duties alleged to have been illegally exacted. *Held*, that the statute of limitations did not run during the time no right of action existed against the collector, but that it ran from February 26, 1845.—*Richardson v. Curtis*, 3 Blatch., 385; 20 Fed. Cas., 707.

Two-Year Limitation Extended to Five Years.—The two years' limitation in the act of April 30, 1790, section 32 (1 Stat., 119), is repealed by implication by the act of February 28, 1839, section 4 (5 Stat., 332), which extends the time to five years.—*Stimpson v. Pond*, 2 Curt., 502; 23 Fed. Cas., 101.

1913 Z. That from and after the taking effect of this Act no collector or other officer of the customs shall be in any way liable to any owner, importer, consignee, or agent of any merchandise, or any other person, for or on account of any rulings or decisions as to the classification of said merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or thing as to which said owner, importer, consignee, or agent of such merchandise might, under this Act, be entitled to appeal from the decision of said collector or other officer, or from any board of appraisers.

SEC. 8.

1909 Subsec. 24: That from and after the taking effect of this Act no collector or other officer of the customs shall be in any way liable to any owner, importer, consignee, or agent of any merchandise, or any other person, for or on account of any rulings or decisions as to the classification of said merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or thing as to which said owner, importer, consignee, or agent of such merchandise might, under this Act, be entitled to appeal from the decision of said collector or other officer, or from any board of appraisers provided for in this Act.

1890 SEC. 25. That from and after the taking effect of this Act no collector or other officer of the customs shall be in any way liable to any owner, importer, consignee, or agent of any merchandise, or any other person, for or on account of any rulings or decisions as to the classification of

1890 said merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any agent of such merchandise might, under this Act, be entitled to appeal other matter or thing as to which said owner, importer, consignee, or from the decision of said collector or other officer, or from any board of appraisers provided for in this Act.

1913 AA. That any person who shall give, or offer to give, or promise to give, any money or thing of value, directly or indirectly, to any officer or employee of the United States in consideration of or for any act or omission contrary to law in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of goods, wares, or merchandise, including herein any baggage or of the liquidation of the entry thereof, or shall by threats or demands or promises of any character attempt to improperly influence or control any such officer or employee of the United States as to the performance of his official duties shall, on conviction thereof, be fined not exceeding \$2,000, or be imprisoned at hard labor not more than one year, or both, in the discretion of the court; and evidence of such giving, or offering, or promising to give, satisfactory to the court in which such trial is had, shall be regarded as prima facie evidence that such giving or offering or promising was contrary to law, and shall put upon the accused the burden of proving that such act was innocent and not done with an unlawful intention.

SEC. 28.

1909 Subsec. 25: That any person who shall give, or offer to give, or promise to give, any money or thing of value, directly or indirectly, to any officer or employee of the United States in consideration of or for any act or omission contrary to law in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of goods, wares, or merchandise, including herein any baggage or of the liquidation of the entry thereof, or shall by threats or demands or promises of any character attempt to improperly influence or control any such officer or employee of the United States as to the performance of his official duties shall, on conviction thereof, be fined not exceeding \$2,000, or be imprisoned at hard labor not more than one year, or both, in the discretion of the court; and evidence of such giving, or offering, or promising to give, satisfactory to the court in which such trial is had, shall be regarded as prima facie evidence that such giving or offering or promising was contrary to law, and shall put upon the accused the burden of proving that such act was innocent and not done with an unlawful intention.

1890 SEC. 26. That any person who shall give, or offer to give, or promise to give, any money or thing of value, directly or indirectly, to any officer or employee of the United States in consideration of or for any act or omission contrary to law in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of goods, wares, or merchandise, including herein any baggage or of the liquidation of the entry thereof, or shall by threats or demands or promises of any character attempt to improperly influence or control any such officer or employee of the United States as to the performance of his official duties shall, on conviction thereof, be fined not exceeding \$2,000, or be imprisoned at hard labor not more than one year, or both, in the discretion of the court; and evidence of such giving, or offering, or promising to give, satisfactory to the court in which such trial is had, shall be regarded as prima facie evidence that such giving or offering or promising was contrary to law, and shall put upon the accused the burden of proving that such act was innocent and not done with an unlawful intention.

1913 BB. That any officer or employee of the United States who shall, excepting for lawful duties or fees, solicit, demand, exact, or receive from any person, directly or indirectly, any money or thing of value in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of goods, wares, or merchandise, including herein any baggage or liquidation of the entry thereof, on conviction

- thereof shall be fined not exceeding \$5,000, or be imprisoned at hard labor not more than two years, or both, in the discretion of the court; and evidence of such soliciting, demanding, exacting, or receiving, satisfactory to the court in which such trial is had, shall be regarded as prima facie evidence that such soliciting, demanding, exacting, or receiving was contrary to law, and shall put upon the accused the burden of providing that such act was innocent and not with an unlawful intention.

SEC. 28.

- Subsec. 26: That any officer or employee of the United States who shall, excepting for lawful duties or fees, solicit, demand, exact, or receive from any person, directly or indirectly, any money or thing of value in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of goods, wares, or merchandise, including herein any baggage or liquidation of the entry thereof, on conviction thereof shall be fined not exceeding \$5,000, or be imprisoned at hard labor not more than two years, or both, in the discretion of the court; and evidence of such soliciting, demanding, exacting, or receiving, satisfactory to the court in which such trial is had, shall be regarded as prima facie evidence that such soliciting, demanding, exacting, or receiving was contrary to law, and shall put upon the accused the burden of providing that such act was innocent and not with an unlawful intention.

- SEC. 27. That any officer or employee of the United States who shall, excepting for lawful duties or fees, solicit, demand, exact, or receive from any person, directly or indirectly, any money or thing of value in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of goods, wares, or merchandise, including herein any baggage or liquidation of the entry thereof, on conviction thereof shall be fined not exceeding \$5,000, or be imprisoned at hard labor not more than two years, or both, in the discretion of the court; and evidence of such soliciting, demanding, exacting, or receiving, satisfactory to the court in which such trial is had, shall be regarded as prima facie evidence that such soliciting, demanding, exacting, or receiving was contrary to law, and shall put upon the accused the burden of providing that such act was innocent and not with an unlawful intention.

- CC. That any baggage or personal effects arriving in the United States in transit to any foreign country may be delivered by the parties having it in charge to the collector of the proper district, to be by him retained, without the payment or exaction of any import duty, or to be forwarded by such collector to the collector of the port of departure and to be delivered to such parties on their departure for their foreign destination, under such rules and regulations as the Secretary of the Treasury may prescribe.

SEC. 28.

- Subsec. 27: That any baggage or personal effects arriving in the United States in transit to any foreign country may be delivered by the parties having it in charge to the collector of the proper district, to be by him retained, without the payment or exaction of any import duty, or to be forwarded by such collector to the collector of the port of departure and to be delivered to such parties on their departure for their foreign destination, under such rules and regulations as the Secretary of the Treasury may prescribe.

- SEC. 28. That any baggage or personal effects arriving in the United States in transit to any foreign country may be delivered by the parties having it in charge to the collector of the proper district, to be by him retained, without the payment or exaction of any import duty, or to be forwarded by such collector to the collector of the port of departure and to be delivered to such parties on their departure for their foreign destination, under such rules and regulations as the Secretary of the Treasury may prescribe.

- Section 28, subsection 28, Act of 1909 embodied in the Act of 1913, section 4, Paragraph S.

SEC. 28.

1909 Subsec. 28: That sections twenty-six hundred and eight, twenty-eight hundred and thirty-eight, twenty-eight hundred and thirty-nine, twenty-eight hundred and forty-one, twenty-eight hundred and forty-three, twenty-eight hundred and forty-five, twenty-eight hundred and fifty-three, twenty-eight hundred and fifty-four, twenty-eight hundred and fifty-six, twenty-eight hundred and fifty-eight, twenty-eight hundred and sixty, twenty-nine hundred, twenty-nine hundred and two, twenty-nine hundred and five, twenty-nine hundred and seven, twenty-nine hundred and eight, twenty-nine hundred and nine, twenty-nine hundred and twenty-two, twenty-nine hundred and twenty-three, twenty-nine hundred and twenty-four, twenty-nine hundred and twenty-seven, twenty-nine hundred and twenty-nine, twenty-nine hundred and thirty, twenty-nine hundred and thirty-one, twenty-nine hundred and thirty-two, twenty-nine hundred and forty-three, twenty-nine hundred and forty-five, twenty-nine hundred and fifty-two, three thousand and eleven, three thousand and twelve, three thousand and twelve and one-half, three thousand and thirteen, of the Revised Statutes of the United States, be, and the same are hereby, repealed, and sections nine, ten, eleven, twelve, fourteen, and sixteen of an Act entitled "An Act to amend the customs-revenue laws and to repeal moieties," approved June twenty-second, eighteen hundred and seventy-four, and sections seven, eight, and nine of the Act entitled "An Act to reduce internal-revenue taxation, and for other purposes," approved March third, eighteen hundred and eighty-three, and all other Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed, but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal or modifications; but all rights and liabilities under said laws shall continue and may be enforced in the same manner, except as otherwise provided in this Act, as if said repeal or modifications had not been made. Any offenses committed, and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed. All acts of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this Act, shall not be affected thereby; and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act, may be commenced and prosecuted, except as otherwise provided in this Act, within the same time and with the same effect as if this Act had not been passed: *And provided further*, That nothing in this Act shall be construed to repeal the provisions of section three thousand and fifty-eight of the Revised Statutes as amended by the Act approved February twenty-third, eighteen hundred and eighty-seven, in respect to the abandonment of merchandise to underwriters or the salvors of property, and the ascertainment of duties thereon.

1890 SEC. 29. That sections twenty-six hundred and eight, twenty-eight hundred and thirty-eight, twenty-eight hundred and thirty-nine, twenty-eight hundred and forty-one, twenty-eight hundred and forty-three, twenty-eight hundred and forty-five, twenty-eight hundred and fifty-three, twenty-eight hundred and fifty-four, twenty-eight hundred and fifty-six, twenty-eight hundred and fifty-eight, twenty-eight hundred and sixty, twenty-nine hundred, and twenty-nine hundred and two, twenty-nine hundred and five, twenty-nine hundred and seven, twenty-nine hundred and eight, twenty-nine hundred and nine, twenty-nine hundred and twenty-two, twenty-nine hundred and twenty-three, twenty-nine hundred and twenty-four, twenty-nine hundred and twenty-seven, twenty-nine hundred and twenty-nine, twenty-nine hundred and thirty, twenty-nine hundred and thirty-one, twenty-nine hundred and thirty-two, twenty-nine hundred and forty-three, twenty-nine hundred and forty-five, twenty-nine hundred and fifty-two, three thousand and eleven, three thousand and twelve, three thousand and twelve and one-half, three thousand and thirteen, of the Revised Statutes of the United States, be, and the same are hereby, repealed, and sections nine, ten, eleven, twelve, fourteen, and six-

teen of an Act entitled "An Act to amend the customs-revenue laws and to repeal moieties," approved June twenty-second, eighteen hundred and seventy-four, and sections seven, eight, and nine of the Act entitled "An Act to reduce internal-revenue taxation, and for other purposes," approved March third, eighteen hundred and eighty-three, and all other Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed, but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal or modifications; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. Any offenses committed, and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed. All acts of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this Act, shall not be affected thereby; and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act, may be commenced and prosecuted within the same time and with the same effect as if this Act had not been passed: *And provided further*, That nothing in this Act shall be construed to repeal the provisions of section three thousand and fifty-eight of the Revised Statutes as amended by the Act approved February twenty-third, eighteen hundred and eighty-seven, in respect to the abandonment of merchandise to underwriters or the salvors of property, and the ascertainment of duties thereon.

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Section 28, subsection 29, Act of 1909, continued in force by the Act of 1913, section 4, Paragraph 5.

Sec. 28.

Subsec. 29: That a United States Court of Customs Appeals is hereby created, and said court shall consist of a presiding judge and four associate judges appointed by the President, by and with the advice and consent of the Senate, each of whom shall receive a salary of \$10,000 per annum. It shall be a court of record with jurisdiction as hereinafter established and limited.

Said court shall prescribe the form and style of its seal and the form of its writs and other process and procedure and exercise such powers conferred by law as may be conformable and necessary to the exercise of its jurisdiction. It shall have the services of a marshal, with the same duties and powers, under the regulations of the court, as are now provided for the marshal of the Supreme Court of the United States, so far as the same may be applicable. Said services within the District of Columbia shall be performed by a marshal at a salary of \$3,000 per annum, to be appointed by and hold office during the pleasure of said court; said services outside the District of Columbia to be performed

1909

by the United States marshals in and for the districts where sessions of said court may be held, and to this end said marshals shall be the marshals of said Court of Customs Appeals. The court shall appoint a clerk, whose office shall be in the city of Washington, District of Columbia, and who shall perform and exercise the same duties and powers in regard to all matters within the jurisdiction of said court as are now exercised and performed by the clerk of the Supreme Court of the United States, so far as the same may be applicable. The salary of the clerk shall be \$4,000 per annum, which sum shall be in full payment for all service rendered by such clerk, and all fees of any kind whatever, and all costs shall be by him turned into the United States Treasury. Said clerk shall not be appointed by the court or any judge thereof as a commissioner, master, receiver, or referee. The costs and fees in the said court shall be fixed and established by said court in a table of fees to be adopted and approved by the Supreme Court of the United States within four months after the organization of said court: *Provided*, That the costs and fees so fixed shall not, with respect to any item, exceed the costs and fees charged in the Supreme Court of the

United States; and the same shall be expended, accounted for, and paid over to the Treasury of the United States. The court shall have power to establish all rules and regulations for the conduct of the business of the court and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law.

The said Court of Customs Appeals shall always be open for the transaction of business, and sessions thereof may, in the discretion of the court, be held by the said court, in the several judicial circuits, and at such places as said court may from time to time designate.

The presiding judge of said court shall be so designated in order of appointment and in the commission issued him by the President, and the associate judges shall have precedence according to the date of their commissions. Any three of the members of said court shall constitute a quorum, and the concurrence of three members of said court shall be necessary to any decision thereof.

The said court shall organize and open for the transaction of business in the city of Washington, District of Columbia, within ninety days after the judges, or a majority of them, shall have qualified.

After the organization of said court no appeal shall be taken or allowed from any Board of United States General Appraisers to any other court, and no appellate jurisdiction shall thereafter be exercised or allowed by any other courts in cases decided by said Board of United States General Appraisers; but all appeals allowed by law from such Board of General Appraisers shall be subject to review only in the Court of Customs Appeals hereby established, according to the provisions of this Act: *Provided*, That nothing in this Act shall be deemed to deprive the Supreme Court of the United States of jurisdiction to hear and determine all customs cases which have heretofore been certified to said court from the United States circuit courts of appeals on applications for writs of certiorari or otherwise, nor to review by writ of certiorari any customs case heretofore decided or now pending and hereafter decided by any circuit court of appeals, provided application for said writ be made within six months after the passage of this Act: *And provided further*, That all customs cases heretofore decided by a circuit or district court of the United States or a court of a Territory of the United States and which have not been removed from said courts by appeal or writ or error, and all such cases heretofore submitted for decision in said courts and remaining undecided may be reviewed on appeal at the instance of either party by the United States Court of Customs Appeals; provided such appeal be taken within one year from the date of the entry of the order, judgment, or decree sought to be reviewed.

1909

The Court of Customs Appeals established by this Act shall exercise exclusive appellate jurisdiction to review by appeal, as provided by this Act, final decisions by a board of general appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith; and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgment or decrees of said Court of Customs Appeals shall be final in all such cases.

Any judge who, in pursuance of the provisions of this Act, shall attend a session of the Court of Customs Appeals held at any place other than the city of Washington, District of Columbia, shall be paid, upon his written and itemized certificate, by the marshal of the district in which the court shall be held, his actual and necessary expenses incurred for travel and attendance, and the actual and necessary expenses of one stenographic clerk who may accompany him, and such payments shall be allowed the marshal in the statement of his accounts with the United States.

The marshal of said court for the District of Columbia and the marshals of the several districts in which said Court of Customs Appeals may be held shall, under the direction of the Attorney General of the United States and with his approval, provide such rooms in the public buildings of the United States as may be necessary for said court: *Provided, however*, That in case proper rooms can not be provided in such

buildings, then the said marshals, with the approval of the Attorney General of the United States, may, from time to time, lease such rooms as may be necessary for said court. The bailiffs and messengers of said court shall be allowed the same compensation for their respective services as are allowed for similar services in the existing circuit courts; and in no case shall said marshals secure other rooms than those regularly occupied by existing circuit courts of appeals, circuit courts, or district courts, or other public officers, except where such can not, by reason of actual occupancy or use, be occupied or used by said Court of Customs Appeals.

If the importer, owner, consignee, or agent of any imported merchandise, or the collector or Secretary of the Treasury, shall be dissatisfied with the decision of the Board of General Appraisers as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of said board, they, or either of them, may, within sixty days next after the entry of such decree or judgment, and not afterwards, apply to the Court of Customs Appeals for a review of the questions of law and fact involved in such decision: *Provided*, That in Alaska and in the insular and other outside possessions of the United States ninety days shall be allowed for making such application to the Court of Customs Appeals. Such application shall be made by filing in the office of the clerk of said court a concise statement of errors of law and fact complained of, and a copy of such statement shall be served on the collector, or on the importer, owner, consignee, or agent, as the case may be. Thereupon the court shall immediately order the Board of General Appraisers to transmit to said court the record and evidence taken by them, together with the certified statement of the facts involved in the case and their decision thereon; and all the evidence taken by and before said board shall be competent evidence before said Court of Customs Appeals. The decision of said Court of Customs Appeals shall be final, and such cause shall be remanded to said Board of General Appraisers for further proceedings to be taken in pursuance of such determination.

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Immediately upon the organization of the Court of Customs Appeals all cases within the jurisdiction of that court pending and not submitted for decision in any of the United States circuit courts of appeals, United States circuit, territorial, or district courts, shall, with the record and samples therein, be certified by said courts to said Court of Customs Appeals for further proceedings in accordance herewith: *Provided*, That where orders for the taking of further testimony before a referee have been made in any of such cases, the taking of such testimony shall be completed before such certification.

That in case of a vacancy or the temporary inability or disqualification for any reason of one or two judges of said Court of Customs Appeals, the President of the United States may, upon the request of the presiding judge of said court, designate any qualified United States circuit or district judge or judges to act in his or their place, and such United States judge or judges shall be duly qualified to so act.

Said Court of Customs Appeals shall have power to review any decision or matter within its jurisdiction and may affirm, modify, or reverse the same and remand the case with such orders as may seem to it proper in the premises, which shall be executed accordingly.

Immediately upon receipt of any record transmitted to said court for determination the clerk thereof shall place the same upon the calendar for hearing and submission; and such calendar shall be called and all cases thereupon submitted, except for good cause shown, at least once every sixty days.

In addition to the clerk of said court the court may appoint an assistant clerk at a salary of \$2,500 per annum, five stenographic clerks at a salary of \$2,400 per annum each, and one stenographic reporter at a salary of \$2,500 per annum, and a messenger at a salary of \$900 per annum, all payable in equal monthly installments, and all of whom, including the clerk, shall hold office during the pleasure of and perform such duties as are assigned them by the court. Said reporter shall prepare and transmit to the Secretary of the Treasury once a week in time for publication in the Treasury Decisions copies of all decisions rendered

1909 to that date by said court, and prepare and transmit, under the direction of said court, at least once a year, reports of said decisions rendered to that date, constituting a volume, which shall be printed by the Treasury Department in such numbers and distributed or sold in such manner as the Secretary of the Treasury shall direct. The marshal of said court for the District of Columbia is hereby authorized to purchase, under the direction of the presiding judge, such books, periodicals, and stationery as may be necessary for the use of said court, and such expenditures shall be allowed and paid by the Secretary of the Treasury upon claim duly made and approved by said presiding judge.

SEC. 2. That section fifteen of said Act be, and the same is hereby, amended so as to read as follows:

1908 "SEC. 15. That if the owner, importer, consignee, or agent of any imported merchandise, or the collector, or the Secretary of the Treasury, shall be dissatisfied with the decision of the Board of General Appraisers, as provided for in section fourteen of this Act, as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, they, or either of them, may, within thirty days next after such decision, if a rehearing has not been previously granted, or within thirty days next after the decision of the Board of General Appraisers after such rehearing, and not afterwards, apply to the circuit court of the United States within the district in which the matter arises for a review of the questions of law and fact involved in such decision. Such application shall be made by filing in the office of the clerk of said circuit court a concise statement of the errors of law and fact complained of, and a copy of such statement shall be served on the collector, or on the importer, owner, consignee, or agent, as the case may be. Thereupon the court shall order the Board of General Appraisers to return to said circuit court the record and the evidence taken by them, together with the certified statement of the facts involved in the case, and their decision thereon; and all competent evidence taken by and before said Board of General Appraisers shall be evidence before said circuit court. The parties litigant shall hereafter be required to introduce all of their evidence before the said Board of General Appraisers prior to its decision of the case. The return made by the Board of General Appraisers in pursuance of the order of the circuit court shall constitute the record upon which said circuit court shall give priority to and proceed to hear and determine the questions of law and fact involved in such decision respecting the classification of such merchandise and the rate of duty imposed thereon under such classification: *Provided*, That the said circuit court is further vested with the power to remand any case pending before it on appeal from a decision of the Board of General Appraisers when, in its opinion, such proceeding is just and proper, but this shall not be ordered except upon motion duly made and after notice to the opposite party. When such order is made the case shall then be remanded to the Board of General Appraisers, whose decision has been appealed from, and the said board shall hear such further testimony as shall be introduced by either party, and shall return to the circuit court the additional evidence so taken, together with a further certified statement of facts as supplemented or modified by such additional testimony, and their decisions upon the whole case as thus supplemented or modified, which said additional return shall be added to and become part of the record upon which the case shall be heard and determined by the circuit court.

"The decision of such circuit court shall be final, and the proper collector, or person acting as such, shall liquidate the entry accordingly, unless such court shall be of the opinion that the question involved is of such importance as to require a review of such decision by the circuit court of appeals of the United States within the circuit in which the matter arises, in which case said circuit court or the judge making the decision may, within thirty days thereafter, allow an appeal to said circuit court of appeals; but an appeal shall be allowed on the part of the United States whenever the Attorney General shall apply for it within thirty days after the rendition of such decision. On such original application and on any such appeal security for damages and costs shall be given as in the case of other appeals in cases in which the United States

is a party. Said circuit court of appeals shall have jurisdiction and power to review such decision, and shall give priority to such cases, and may affirm, modify, or reverse such decision of such circuit court and remand the case with such orders as may seem to it proper in the premises, which shall be executed accordingly.

"The decision of such circuit court of appeals may be reviewed by the Supreme Court of the United States in any of the ways provided in cases arising under the revenue laws by the Act approved March third, eighteen hundred and ninety-one, entitled 'An Act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes.'

1908 "All final judgments, when in favor of the importer, shall be satisfied and paid by the Secretary of the Treasury from the permanent indefinite appropriation provided for in section twenty-four of this Act.

"For the purposes of this section the circuit courts of the United States shall be deemed always open, and said circuit courts, respectively, may establish, and from time to time alter, rules and regulations not inconsistent herewith for the procedure in such cases as they shall deem proper.

"Where cases arise at ports within any jurisdiction having no circuit court, applications for review of the decisions of the Board of General Appraisers provided for in section fifteen of this Act shall be filed with the clerks of the courts having cognizance of the same classes of cases as circuit courts, and such cases shall be heard and determined by such courts, with the same powers and in like manner as herein provided for the hearing and determination of such cases in circuit courts, and such decisions shall be subject to review in the manner provided by law."

SEC. 15. That if the owner, importer, consignee, or agent of any imported merchandise, or the collector, or the Secretary of the Treasury, shall be dissatisfied with the decision of the Board of General appraisers, as provided for in section fourteen of this Act, as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, they or either of them, may, within thirty days next after such decision, and not afterwards, apply to the circuit court of the United States within the district in which the matter arises, for a review of the questions of law and fact involved in such decision. Such application shall be made by filing in the office of the clerk of said circuit court a concise statement of the errors of law and fact complained of, and a copy of such statement shall be served on the collector, or on the importer, owner, consignee, or agent, as the case may be. Thereupon the court shall order the board of appraisers to return to said circuit court the record and the evidence taken by them, together with a certified statement of the facts involved in the case, and their decisions thereon; and all the evidence taken by and before said appraisers shall be competent evidence before said circuit court; and within

1890 twenty days after the aforesaid return is made the court may, upon the application of the Secretary of the Treasury, the collector of the port, or the importer, owner, consignee, or agent, as the case may be, refer it to one of said general appraisers, as an officer of the court, to take and return to the court such further evidence as may be offered by the Secretary of the Treasury, collector, importer, owner, consignee, or agent, within sixty days thereafter, in such order and under such rules as the court may prescribe; and such further evidence with the aforesaid returns shall constitute the record upon which said circuit court shall give priority to and proceed to hear and determine the questions of law and fact involved in such decision, respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, and the decision of such court shall be final, and the proper collector, or person acting as such, shall liquidate the entry accordingly, unless such court shall be of opinion that the question involved is of such importance as to require a review of such decision by the Supreme Court of the United States, in which case said circuit court, or the judge making the decision may, within thirty days thereafter, allow an appeal to said Supreme Court; but an appeal shall be allowed on the part of the United States whenever the Attorney

General shall apply for it within thirty days after the rendition of such decision. On such original application, and on any such appeal, security for damages and costs shall be given as in the case of other appeals in cases in which the United States is a party. Said Supreme Court shall have jurisdiction and power to review such decision, and shall give priority to such cases, and may affirm, modify, or reverse such decision of such circuit court, and remand the case with such orders as may seem to it proper in the premises, which shall be executed accordingly. All final judgments, when in favor of the importer, shall be satisfied and paid by the Secretary of the Treasury from the permanent indefinite appropriation provided for in section twenty-three of this Act. For the purposes of this section the circuit courts of the United States shall be deemed always open, and said circuit courts, respectively, may establish, and from time to time alter, rules and regulations not inconsistent herewith for the procedure in such cases as they shall deem proper.

DECISIONS UNDER THE ACT OF 1913.

Immunity of the United States from Suit.—The United States may not be sued in the courts of this country without its consent. A suit against the Secretary of the Treasury to review his action in determining the rate of duty to be collected on foreign sugar is, in effect, a suit against the United States.—*State of Louisiana v. McAdoo*, Secretary of the Treasury (U. S.), T. D. 34764.

Appeals to United States Supreme Court from Decisions of the Court of Customs Appeals.

AN ACT To amend section one hundred and ninety-five of the Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one hundred and ninety-five of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and hereby is, amended so as to read as follows:

"SEC. 195. That the Court of Customs Appeals established by this chapter shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by a board of general appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classifications, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said Court of Customs Appeals shall be final in all such cases: *Provided, however*, That in any case in which the judgment or decree of the Court of Customs Appeals is made final by the provisions of this title, it shall be competent for the Supreme Court, upon the petition of either party, filed within sixty days next after the issue by the Court of Customs Appeals of its mandate upon decision, in any case in which there is drawn in question the construction of the Constitution of the United States, or any part thereof, or of any treaty made pursuant thereto, or in any other case when the Attorney General of the United States shall, before the decision of the Court of Customs Appeals is rendered, file with the court a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court, to require, by certiorari or otherwise, such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court: *And provided further*, That this Act shall not apply to any case involving only the construction of section one, or any portion thereof, of an Act entitled 'An Act to pro-

vide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' approved August fifth, nineteen hundred and nine, nor to any cas involving the construction of section two of an Act entitled 'An Act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes,' approved July twenty-sixth, nineteen hundred and eleven."

Approved, August 22, 1914.—Dept. Order (T. D. 34747).

Service of Copy of Assignment of Error.—The requirement of section 198, Judicial Code of the United States (36 Stat. L., 1146) that, upon appeal to the United States Court of Customs Appeals, a copy of the assignment of error "shall be served on the collector, or on the importer, owner, consignee, or agent, as the case may be," is not jurisdictional; and, if omitted or unreasonably delayed, the United States Court of Customs Appeals has ample power to direct its issue. Its delay for more than the 60 days prescribed by the statute is not ground for a motion to dismiss the appeal.—*Germania Importing Co. v. U. S.* (Ct. Cust. Appls.), T. D. 37218.

DECISIONS UNDER THE ACT OF 1909.

Stipulations of Fact and of Law, Effect of.—Only the parties are interested in the facts of a case, and their agreed statement of them concludes the court. The public also is interested in the law, and their agreed statement of it would not conclude the court.—*Salomon & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 36255; *G. A. Ab. 38109* reversed.

Jurisdiction in Cases Relating to Charges on Exportation of Drawback Goods.

JURISDICTION.—The court may at any stage raise the question of jurisdiction of the subject matter, and the determination of the trial court that it has jurisdiction adds nothing to the force of its judgment.

BOARD'S JURISDICTION UNDER SUBSECTION 14 OF SECTION 28, ACT OF 1909.—The appellant was required to pay for the services of inspectors who supervised the loading of a vessel at night and on Sundays and holidays. Subsection 14 of section 28, tariff act of 1909, was not intended to confer jurisdiction upon the board in any cases other than those related to duties or charges on imported goods, and the charges here could not be reviewed. *Czarnecki's case*, *G. A. 3785* (T. D. 17851).

DRAWBACKS AND THE SECRETARY OF THE TREASURY.—The jurisdiction to allow or refuse drawbacks is vested in the Secretary of the Treasury, and it would seem incongruous to vest in another tribunal the decision of questions relating to the charges connected with the exportation of drawback goods, which in effect result in a reduction of the allowance of drawback.—*Atlantic Transport Co. v. U. S.* (Ct. Cust. Appls.), T. D. 34872; (*G. A. 7513*) T. D. 33979 and (*G. A. Ab. 34480*) T. D. 34069 affirmed.

Charges—Extraordinary Services of Inspectors.—A charge for the services of inspectors in lading a vessel with certain articles manufactured in the United States for export upon which drawback duty was claimed, under special license provided for by the act of February 13, 1911, is not a tax or duty upon articles exported, but a charge for extraordinary services rendered in accordance with the express provisions of said act.—T. D. 33979 (*G. A. 7513*).

Motion for a New Trial.—The affidavit of merits does not properly specify the testimony offered to be produced at a rehearing if granted. The motion itself is vague in terms and is unverified, though including matters outside the record.—*Gallagher & Ascher et al. v. U. S.* (Ct. Cust. Appls.), T. D. 33512; (*G. A. Ab. 27434*) T. D. 32126 affirmed.

Rehearing.—This cause was reversed in a former decision (4 Ct. Cust. Appls., —; T. D. 33200), the appellee, however, being adjudged a more favorable rate than that he had obtained from the board. There was no cross appeal. A party who is dissatisfied with the judgment of a lower tribunal, in order to obtain a review thereof and a judgment in an appellate tribunal more favorable to himself, must make his own appeal, and failing in that, can be heard only in support of the judgment or decree from which the appeal is taken by the other party.—U. S. v. Von Oefele (Ct. Cust. Appls.), T. D. 33492.

Board's Ruling Not to be Disturbed on Defective Proof.—The evidence necessary to fix the proper classification of these gloves would include proof of a variety of facts as to manufacture and trade usage. The record here is scanty, too scanty of evidence to warrant the board's finding being disturbed. U. S. v. Spielmann (1 Ct. Cust. Appls., 279; T. D. 31320); U. S. v. Perkins (ibid., 323; T. D. 31430); and Carson v. U. S. (2 Ct. Cust. Appls., —; T. D. 31656).—U. S. v. Wertheimer & Co. (Ct. Cust. Appls.), T. D. 32204; (Ab 24658) T. D. 31236 affirmed.

Sufficiency of Record.

COURT OF CUSTOMS APPEALS—POWERS TO REVIEW.—The act creating this court empowers it to review not alone the law, but, when the findings of the Board of General Appraisers are made an issue, to review the facts presented upon appeal to this court.

To enable this court fairly to review a finding of fact by the board, when this finding is made an issue on appeal, it is essential that the court should have before it all the testimony that influenced the board in reaching its conclusion.

This is not to say the board may not, in the course of its oftentimes necessarily summary determinations, rely in its findings on proof in other like cases, heard on earlier dates by the board.

Under the circumstances we have no other recourse than to reverse the cases and remand them for a new trial. Accordingly the decision of the board is reversed, and so remanded.—Sheldon v. U. S. (Ct. Cust. Appls.), T. D. 31594; (G. A. Ab. 24047) T. D. 30983 reversed.

Appeal After Mandate Issued.—In these cases a mandate having been issued on petition directing the court below to transmit the records to this court for adjudication, and it being contended the cases are not properly here on appeal, the petitions will be treated as applications for the allowance of appeals and the appellants will be permitted to withdraw the original petition with certificates of the allowance of their appeals by this court, to be used in having the cases duly certified from the court below for determination here.—Gross v. U. S. (Ct. Cust. Appls.), T. D. 31323.

Power to Remand to Have Additional Testimony Taken.—The power to remand a case for the purpose of having additional testimony taken is not incident to the right of appeal itself, but must depend upon express statutory authority.

The organic act establishing this court embodies all provisions relative to appeals to this court now in force, and in determining whether the authority to remand a cause and direct a rehearing resides here, the provisions of the organic act are decisive.

There is no such authority directly conferred by that act, it may not be brought in by construction, and the terms of the statute contemplating as speedy a determination of causes here, as properly may be, a motion to remand to take additional testimony will be denied.

Rule 11 of this court relating to amendments, orders, and judgments should be construed in connection with the statute giving authority to remand a case to the board by an order made on the final hearing before this court. If open to a broader interpretation, it must be held that in so far as it attempted to extend the power of the court beyond the limit here prescribed it was in excess of authority.—*Stegeman v. U. S. (Ct. Cust. Appls.)*, T. D. 31240. Motion denied.

Motion for Return of a Complete Copy of Evidence.—Where testimony was offered before a classification board and excluded by order of the board over objection taken, for this court to determine the propriety of the exclusion, all the testimony so excluded should be incorporated in the record on appeal. *Harris v. U. S.* (177 Fed. Rep., 475) distinguished.—*Oelrichs v. U. S. (Ct. Cust. Appls.)*, T. D. 31238. Motion granted.

Time Within Which Appeals Can be Taken.—Upon the organization of this court, April 22, 1910, the provisions of the organic act as to appeals became fully effective, and 60 days, not 30, marked the period within which an appeal could be taken from a decision of the Board of General Appraisers.—*U. S. v. Marsching (Ct. Cust. Appls.)*, T. D. 30771. Motion to dismiss appeals taken from Board of United States General Appraisers denied.

DECISIONS PRIOR TO THE ESTABLISHMENT OF THE COURT OF CUSTOMS APPEALS.

Refunds to Importers Under Court Decision—Jurisdiction of Court.—On appeal to a circuit court from a decision of the Board of General Appraisers, under section 15, customs administrative act of 1890, that court's jurisdiction was appellate only, and in the present case it had been completely exercised by an affirmance in favor of an importer, and the court had no power to order the collector of customs to pay to the importer's attorneys the proportion of the refund to which they were entitled under their agreement with the importer.—*U. S. v. Calogera (C. C.)*, T. D. 31729.

Appeal—Further Evidence.—The practice of taking additional evidence on appeal from the Board of General Appraisers, under section 15, customs administrative act of 1890, has been very liberal.—*Harris v. U. S. (C. C.)*, T. D. 31166.

Assignments of Error.—Among the assignments of error made by an importer on appeal from the Board of General Appraisers were general assignments that the board had erred "in overruling the protests" and "in not sustaining the protests," and the protests thus referred to mentioned the paragraph relied upon by the importers. *Held*, that this was a compliance with the requirement in section 15, customs administrative act of 1890, of "a concise statement of the errors of law and fact complained of."—*U. S. v. Loewenthal (C. C. A.)*, T. D. 30215.

Appeal—Further Evidence.—Where a general appraiser has been appointed referee to take further testimony in the circuit court, on appeal from the Board of General Appraisers under section 15, customs administrative act of 1890, there is no authority whereby the circuit court may direct the general appraiser to go beyond the territorial jurisdiction of the court to take testimony. This rule is not altered by the fact that the general appraiser may express his willingness to go.—*Nordlinger v. U. S. (C. C.)*, T. D. 30189.

Appeal From Circuit Court.—Decrees by circuit courts on review of decisions by the Board of General Appraisers, under section 15, customs administrative act of 1890, may be reviewed by circuit courts of appeals by appeal only, under section 6, act of March 3, 1891 (26 Stat., 828), creating the circuit courts

of appeals. Review by writ of error is not permissible.—*U. S. v. Bond* (C. C. A.), T. D. 29816.

Appeal from General Appraisers.

TIMELINESS.—In construing the provision in section 15, customs administrative act of 1890, that applications to circuit courts from decisions by the Board of General Appraisers should be made "within 30 days next after such decision, and not afterwards, by filing in the office of the clerk of said circuit" an assignment of errors, *Held*, that the statute is mandatory, that it must be construed strictly, and that a delay of one day beyond the period named is as fatal as a longer period.

JURISDICTION OF CIRCUIT COURT—DISMISSAL.—Where an application for review of a decision by the Board of General Appraisers is not filed within the time required by section 15, customs administrative act of 1890, the proper disposition of the case by the circuit court is by an order of dismissal for want of jurisdiction. No case is presented for the exercise of discretion as to whether the application will be entertained by the court.

TRIAL ON MERITS.—Going to trial upon the merits of a case does not have the effect of waiving the lack of jurisdiction on the part of the tribunal in which the case is pending.—*Carriere v. U. S.* (C. C.), T. D. 28957.

Further Evidence.—The procedure is faulty in customs appeals under section 15, customs administrative act of 1890, in that it permits parties to partially present a case before the Board of General Appraisers, and, on losing it there, then to produce in the circuit court evidence which could have as easily been submitted to the board.—*U. S. v. Hempstead* (C. C.), T. D. 28820.

Appeal to Supreme Court.—The fact that section 15 of the act of June 10, 1890, authorizes the circuit court when it deems the question of special importance to allow an appeal to the Supreme Court, can not be construed as having "otherwise provided by law," as such construction would extend the direct appellate jurisdiction of the Supreme Court beyond the classes of cases specially enumerated in section 5 of the act creating the circuit court of appeals and would in fact deprive the latter court of appellate jurisdiction, for prior to that act there was "provision by law" in respect to appeals or writs of error in all cases.

Section 5 of the act creating the circuit court of appeals gives that court jurisdiction of an appeal from a judgment rendered by a circuit court in reviewing a decision of the Board of General Appraisers.—*Louisville Public Warehouse Co. v. Collector of Customs* (C. C. A.), 49 Fed. Rep., 561.

Appeal of Attorney General From Decision of Circuit Court.—An appeal by the United States from the judgment of the circuit court can only be allowed on the application and in the name of the Attorney General when the record does not show that the court is of opinion that the question involved is of such importance as to require an appeal. But where such an appeal is irregularly taken in the name of the collector by the district attorney and the parties admit, in the circuit court of appeals, that the same was in fact taken by direction of the Attorney General and consent that the petition for appeal may be amended by substituting his name for that of the collector, the circuit court of appeals has jurisdiction to allow such amendment.

A judgment of the circuit court on an appeal from the board is reviewable not by the Supreme Court but by the circuit court of appeals, the case being "one arising under the revenue laws."

On an appeal from the circuit court to the circuit court of appeals it is an irregularity to address the citation to the importing firm instead of to the individual partners, but the irregularity is cured by the general appearance of

the partners in the circuit court of appeals without making any objection.—*U. S. v. Hopewell* (C. C. A.), 51 Fed. Rep., 798.

Authority of Circuit Court to Appoint Commission.—The circuit court has no power to issue a commission to take testimony of a foreign witness in cases pending on an appeal from a decision of the Board of General Appraisers.—*Bartram v. U. S.*, 106 Fed. Rep., 878.

Circuit Court Can Not Review Decision of Board on Valuation.—An appeal to or review by the circuit court is restricted to questions of law and fact involved in the decision of the appraisers respecting the classification of merchandise and the rate of duty imposed thereon under such classification.

Where a board of three general appraisers, acting under section 13 of the act of June 10, 1890, on reappraisalment, reappraised the value of merchandise more than 10 per cent above that declared in the entry and the additional duties provided for in section 7 of said act thereupon accrued and were exacted by the collector, on appeal from or review of the decision of the collector in assessing such additional duties is provided for in this act.

Whether or not any relief can be secured by an importer where there has been a fundamental error in fixing the value none is to be found under this act by appeal or review in the circuit court.—*In re Passavant* (C. C.), 50 Fed. Rep., 788.

Circuit Court Can Not Review Decision of Board on Question of Weight.—An appeal from a decision of the board sustaining the claim of an importer of burlaps for a deduction of the excess of weight caused by the goods being wet is not an appeal from a decision respecting the classification of such merchandise and the rate of duty imposed thereon under such classification within the meaning of this act.—*Foster v. Vocke* (C. C.), 60 Fed. Rep., 745.

Costs Against United States.—On a review in the circuit court of a decision of the Board of General Appraisers no interest or costs can be recovered against the United States in the absence of special statutory provision.—*In re Chase* (C. C.), 50 Fed. Rep., 695.

In a proceeding to review the decision of the Board of General Appraisers costs are recoverable against the United States, since the purpose of the act was merely to "simplify the laws" and change the procedure, not to take away the previously existing right of the importer to costs (in his action against the collector); and, where the United States are appellants and decision is against them, the costs should be paid out of the proper funds according to R. S. 1001.

In a proceeding to review the decision of the board the award of the circuit court is not limited to giving a mere certificate showing the amount due the claimant, but its duty is to hear, determine, and adjudge, under the act of March 3, 1887 (24 Stat., 505), and a judgment that the petitioner recover is not erroneous.—*U. S. v. Davis* (C. C. A.), 54 Fed. Rep., 147.

Costs do not, as a matter of common right, go with a judgment against the Government; and a party suing the United States can not recover costs unless he shows by the act under which he sues that the United States has consented to pay costs. Neither in cases appealed from the Board of General Appraisers to the circuit court nor to the circuit court of appeals are costs recoverable against the United States.

The provision requiring appeals within 30 days applies only to appeals from the board of appraisers and to the rulings of the circuit court thereon. It does not apply to a decree of the circuit court upon a question of costs and interest made after a reversal of a former decree in the circuit court of appeals and a remand of the case. An appeal from such a decree is governed by

the general rule. Reversing the circuit court (55 Fed. Rep., 964).—*Marine v. Lyon* (C. C. A.), 62 Fed. Rep., 153.

Evidence Not Submitted to Board Introduced on Appeal.—Through inadvertence the importer failed to appear before the Board of General Appraisers and he was defaulted, the decision of the collector being affirmed. Subsequently, on appeal, he obtained an order from the circuit court directing the taking of further testimony. The Government made no objection to the granting of the order, did not seek to have it set aside, and appeared at a hearing held in pursuance thereof and cross-examined witnesses. At a subsequent hearing, counsel for the Government, for the first time, raised an objection to the taking of further testimony on the ground that the importers were concluded by their failure to appear before the board and offer testimony. It was held that it was then too late to raise the question and that the Government had waived its right to object and that the circuit court has power, on appeal, to direct additional testimony to be taken, notwithstanding that the importer defaulted before the board, where such default has been waived.—*In re Myers*, 123 Fed. Rep., 952.

If the failure to present evidence before the Board of General Appraisers in support of a protest is not due to the fault of the importer, the circuit court will permit him to introduce evidence on appeal.—*Cowl v. U. S.*, 124 Fed. Rep., 475.

Certain importers appeared before the board in support of their protests against the decisions of the collector, but as to one of said protests they offered no evidence before the board. *Held*, that they had a right to appeal to the circuit court, and that the right to bring new evidence was coextensive with the right of appeal.—*Lesser v. U. S. (C. C.)*, 89 Fed. Rep., 197.

Jurisdiction of Supreme Court.—The Supreme Court has no jurisdiction to review on appeal a judgment of a circuit court of appeals affirming a decree of a circuit court overruling a decision of the Board of General Appraisers and which sustains as valid duties collected.—*Anglo-California Bank v. U. S.*, 175 U. S., 37.

Jurisdiction of Court of Appeals.—It is not within the province of a circuit court of appeals to grant to or withhold from an importer leave to apply to an officer of customs for a remission of duties or if a judgment rendered in a case arising under this act by a circuit court be affirmed by the circuit court of appeals to direct or suggest the action of such circuit court in regard to a new trial upon newly discovered evidence or newly ascertained facts.—*In re Marquand* (C. C. A.), 57 Fed. Rep., 189.

Jurisdiction of Circuit Court.—The circuit courts have jurisdiction, regardless of amount, of actions against a collector of customs for duties exacted and paid under protest upon merchandise alleged not to have been imported.—*Downes v. Bidwell*, 182 U. S., 244.

The jurisdiction indicated in section 15, act of June 10, 1890, is vested in the circuit court for the district where the port of entry is situated and not in that of the district where the board of appraisers meets.—*In re Wyman*, 45 Fed. Rep., 469.

A circuit court has jurisdiction to hear and determine on appeal the questions of law and of fact involved in a decision of the board sustaining the action of the collector in exacting a charge for gauging molasses under R. S. 3023.—*U. S. v. Jahn*, 155 U. S., 109.

The act of June 10, 1890, confers no jurisdiction upon circuit courts on the application of dissatisfied importers to review and reverse a decision of a

board of general appraisers ascertaining and fixing the dutiable value of goods when such board has acted in pursuance of law and without fraud or other misconduct from which bad faith could be implied.—*Passavant v. U. S.*, 148 U. S., 214.

Certain merchandise consisting of metal polish was imported in 1892. The collector declined to admit it to entry on the ground that he had received from the Secretary facsimiles of a certain trade-mark filed in the Treasury Department by the Meyers-Putz Pomade Co., which facsimiles were duly recorded in the New York customhouse pursuant to instructions contained in a circular of October 31, 1890, and that said collector had decided that the trade-mark borne by the goods attempted to be entered simulated or copied the trade-mark so filed and recorded. On an application for a mandamus to compel the collector to take evidence as to the validity of the trade-mark filed by the Meyers-Putz Pomade Co. in Washington, and the right of the importers to use the trade-mark upon their goods, held that the circuit court had no jurisdiction to grant a mandamus, and that the question whether the decision of the proper customs officers that any particular import was within the prohibition of the statute was reviewable by the courts and, if so, in what way, was not before the court in this proceeding.—*In re Vintschger (C. C.)*, 50 Fed. Rep., 459.

Jurisdiction of Court of Claims.—This court has jurisdiction of the following from or connected with the revenue laws: (1) When the Secretary transmits (under R. S. 1063) a claim which arose under the revenue laws; (2) where the law declares that upon a party's doing some definite act he shall be entitled to money, and the right thereto is not dependent upon the action of an executive officer, but is complete upon the doing of an act; (3) where the right of a party to money is dependent upon some such decision or action and the same has been rendered or taken in the party's favor.—*Campbell v. U. S.*, 13 C. Cls. R., 470.

The general jurisdiction of the Court of Claims does not attach to claims for the recovery back of taxes and duties illegally assessed for which special provisions are made by statute giving jurisdiction to other tribunals and other courts.—*Kaufman v. U. S.*, 11 C. Cls. R., 659; *Winnisimmit Co. v. Same*, 12 id., 319; *Boughton v. Same*, id., 330; *Walker v. Same*, id., 408; *De Celis v. Same*, 13 id., 117.

Cases arising under the revenue laws are not within the jurisdiction of the Court of Claims.—*Nichols v. U. S.*, 7 Wall., 122.

The Court of Claims has not jurisdiction to hear and determine cases arising under the revenue laws, that is to say where the action is brought to recover taxes on imports which have been paid into the Treasury; for the revenue laws constitute a system which provides not only the manner of collection but also the only remedy by which errors of collection can be corrected.—*Nicoll v. U. S.*, 7 C. Cls. R., 36, overruling *Schlesinger v. U. S.*, 1 C. Cls. R., 16.

Jurisdiction of Courts.—The Court of Claims and the circuit courts, acting as such, have jurisdiction of actions for the recovery of duties illegally exacted upon merchandise alleged not to have been imported from a foreign country.—*Dooley v. U. S.*, 182 U. S., 222, 243.

Method of Review of Decision of Circuit Court.—The appellate jurisdiction given to the Supreme Court in this section was, by the act of March 3, 1891, creating the circuit court of appeals, transferred to such courts, but the method and system of review remained unaltered. The decision of the circuit court can be reviewed only by appeal and not by writ of error.—*U. S. v. Diamond Match Co.*, 115 Fed. Rep., 288.

Return of Board Must Be Complete.—When the decision of the Board of General Appraisers is made the subject of review in the circuit court, the re-

turn made by the board must embody all the evidence which was considered by them in reaching their decision, and it would seem that, as they act judicially, they can not act as witnesses.

In the circuit court the return of the board is to be considered substantially in the same manner as the report of the master in an equity suit, or as the record, including the opinion of the court in an equity or admiralty suit, is considered in an appellate court. The circuit court, therefore, should not disturb the findings of the board upon doubtful questions of fact, especially questions which turn on the intelligence and credibility of witnesses; but when a finding of fact is wholly without evidence to support it, or where it is clearly contrary to the weight of evidence, it is the duty of the court to disregard it.—*In re Van Blankensteyn* (C. C. A.), 56 Fed. Rep., 474.

Security for Costs.—Though section 15, act of June 10, 1890, requires security for costs, and the practice of the courts conforms thereto, an application filed when the statute was new and there was no express rule of the court defining what the security should be, and prosecuted in good faith by counsel, who did not understand that the statute required security at the outset, will not be dismissed because security was not given when the application was made if the ordinary cost bond is filed within the time named in the ruling on the motion to dismiss.—*In re Certain Merchandise* (C. C.), 64 Fed. Rep., 576.

1913 Section 28, subsection 30, Act of 1909, continued in force by the Act of 1913, section 4, paragraph S.

SEC. 28.

Subsec. 30: That there shall be appointed by the President, by and with the advice and consent of the Senate, an Assistant Attorney General, who shall exercise the functions of his office under the supervision and control of the Attorney General of the United States, and who shall be paid a salary of \$10,000 per annum; and there shall also be appointed by the Attorney General of the United States a Deputy Assistant Attorney General, who shall be paid a salary of \$7,500 per annum, and four attorneys, who shall be paid salaries of \$5,000 per annum each. Said attorneys shall act under the immediate direction of said Assistant Attorney General, or, in case of his absence or a vacancy in his office, under the direction of said Deputy Assistant Attorney General, and said Assistant Attorney General, Deputy Assistant Attorney General, and attorneys shall have charge of the interests of the Government in all matters of reappraisement and classification of imported goods and of all litigation incident thereto, and shall represent the Government in all the courts and before all tribunals wherein the interests of the Government require such representation.

1909

But the Attorney General may, whenever in his opinion the public interest requires it, employ and retain, in the name of the United States, such special attorneys and counselors at law in the conduct of customs cases as he may think necessary to assist said Assistant Attorney General in the discharge of any of the duties incumbent upon him and his said subordinates, and shall stipulate with such attorneys and counsel the amount of compensation and shall have supervision of their conduct and proceedings.

SECTION IV, TARIFF ACT OF 1913.

1913 **A.** That for the purpose of readjusting the present duties on importations into the United States and at the same time to encourage the export trade of this country, the President of the United States is authorized and empowered to negotiate trade agreements with foreign nations wherein mutual concessions are made looking toward freer trade relations and further reciprocal expansion of trade and commerce: *Provided, however,* That said trade agreements before becoming operative shall be submitted to the Congress of the United States for ratification or rejection.

1909 **SEC. 2.** That from and after the thirty-first day of March, nineteen hundred and ten, except as otherwise specially provided for in this section, there shall be levied, collected, and paid on all articles when imported from any foreign country into the United States, or into any of its possessions (except the Philippine Islands and the islands of Guam and Tutuila), the rates of duty prescribed by the schedules and paragraphs of the dutiable list of section one of this Act, and in addition thereto 25 per centum ad valorem; which rates shall constitute the maximum tariff of the United States: *Provided,* That whenever, after the thirty-first day of March, nineteen hundred and ten, and so long thereafter as the President shall be satisfied, in view of the character of the concessions granted by the minimum tariff of the United States, that the Government of any foreign country imposes no terms or restrictions, either in the way of tariff rates or provisions, trade or other regulations, charges, exactions, or in any other manner, directly or indirectly, upon the importation into or the sale in such foreign country of any agricultural, manufactured, or other product of the United States, which unduly discriminate against the United States or the products thereof, and that such foreign country pays no export bounty or imposes no export duty or prohibition upon the exportation of any article to the United States which unduly discriminates against the United States or the products thereof, and that such foreign country accords to the agricultural, manufactured, or other products of the United States treatment which is reciprocal and equivalent, thereupon and thereafter, upon proclamation to this effect by the President of the United States, all articles when imported into the United States, or any of its possessions (except the Philippine Islands and the islands of Guam and Tutuila), from such foreign country shall, except as otherwise herein provided, be admitted under the terms of the minimum tariff of the United States as prescribed by section one of this Act. The proclamation issued by the President under the authority hereby conferred and the application of the minimum tariff thereupon may, in accordance with the facts as found by the President, extend to the whole of any foreign country, or may be confined to or exclude from its effect any dependency, colony, or other political subdivision having authority to adopt and enforce tariff legislation, or to impose restrictions or regulations, or to grant concessions upon the exportation or importation of articles which are, or may be, imported into the United States. Whenever the President shall be satisfied that the conditions which led to the issuance of the proclamation hereinbefore authorized no longer exist, he shall issue a proclamation to this effect, and ninety days thereafter the provisions of the maximum tariff shall be applied to the importation of articles from such country. Whenever the provisions of the maximum tariff of the United States shall be applicable to articles imported from any foreign country they shall be applicable to the products of such country, whether imported directly from the country of production or otherwise. To secure information to assist the President in

the discharge of the duties imposed upon him by this section, and the officers of the Government in the administration of the customs laws, the President is hereby authorized to employ such persons as may be required.

1909

SEC. 4. That the President shall have power and it shall be his duty to give notice, within ten days after the passage of this Act, to all foreign countries with which commercial agreements in conformity with the authority granted by section three of the Act entitled, "An Act to provide revenue for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, have been or shall have been entered into, of the intention of the United States to terminate such agreement at a time specified in such notice, which time shall in no case, except as hereinafter provided, be longer than the period of time specified in such agreements respectively for notice for their termination; and upon the expiration of the periods when such notice of termination shall become effective the suspension of duties provided for in such agreements shall be revoked, and thereafter importations from said countries shall be subject to no other conditions or rates of duty than those prescribed by this Act and such other Acts of Congress as may be continued in force: *Provided*, That until the expiration of the period when the notice of intention to terminate hereinafter provided for shall have become effective, or until such date prior thereto as the high contracting parties may by mutual consent select, the terms of said commercial agreements shall remain in force: *And provided further*, That in the case of those commercial agreements or arrangements made in accordance with the provisions of section three of the tariff Act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, which contain no stipulations in regard to their termination by diplomatic action, the President is authorized to give to the Governments concerned a notice of termination of six months, which notice shall date from April thirtieth, nineteen hundred and nine.

1897

SEC. 3. That for the purpose of equalizing the trade of the United States with foreign countries, and their colonies, producing and exporting to this country the following articles: Argols, or crude tartar, or wine lees, crude; brandies, or other spirits manufactured or distilled from grain or other materials; champagne and all other sparkling wines; still wines, and vermouth; paintings and statuary; or any of them, the President be, and he is hereby, authorized, as soon as may be after the passage of this Act, and from time to time thereafter, to enter into negotiations with the Governments of those countries exporting to the United States the above-mentioned articles, or any of them, with a view to the arrangement of commercial agreements in which reciprocal and equivalent concessions may be secured in favor of the products and manufactures of the United States; and whenever the Government of any country, or colony, producing and exporting to the United States the above-mentioned articles, or any of them, shall enter into a commercial agreement with the United States, or make concessions in favor of the products, or manufactures thereof, which, in the judgment of the President, shall be reciprocal and equivalent, he shall be, and he is hereby, authorized and empowered to suspend, during the time of such agreement or concession, by proclamation to that effect, the imposition and collection of the duties mentioned in this Act, on such article or articles so exported to the United States from such country or colony, and thereupon and thereafter the duties levied, collected, and paid upon such article or articles shall be as follows, namely:

Argols, or crude tartar, or wine lees, crude, 5 per centum ad valorem.

Brandies, or other spirits manufactured or distilled from grain or other materials, \$1.75 per proof gallon.

Champagne and all other sparkling wines, in bottles containing not more than one quart and more than one pint, \$6 per dozen; containing not more than one pint each and more than one-half pint, \$3 per dozen; containing one-half pint each or less, \$1.50 per dozen; in bottles or other vessels containing more than one quart each, in addition to \$6 per dozen bottles on the quantities in excess of one quart, at the rate of \$1.90 per gallon.

Still wines, and vermouth, in casks, 35 cents per gallon; in bottles or jugs, per case of one dozen bottles or jugs containing each not more than one quart and more than one pint, or twenty-four bottles or jugs containing each not more than one pint, \$1.25 per case, and any excess beyond these quantities found in such bottles or jugs shall be subject to a duty of 4 cents per pint or fractional part thereof, but no separate or additional duty shall be assessed upon the bottles or jugs.

Paintings in oil or water colors, pastels, pen and ink drawings, and statuary, 15 per centum ad valorem.

The President shall have power, and it shall be his duty, whenever he shall be satisfied that any such agreement in this section mentioned is not being fully executed by the Government with which it shall have been made, to revoke such suspension and notify such Government thereof.

And it is further provided that with a view to secure reciprocal trade with countries producing the following articles, whenever and so often as the President shall be satisfied that the Government of any country, or colony of such Government, producing and exporting directly or indirectly to the United States coffee, tea, and tonquin, tonqua, or tonka beans, and vanilla beans, or any of such articles, imposes duties or other exactions upon the agricultural, manufactured, or other products of the United States, which, in view of the introduction of such coffee, tea, and tonquin, tonqua, or tonka beans, and vanilla beans, into the United States, as in this Act hereinbefore provided for, he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this Act relating to the free introduction of such coffee, tea, and tonquin, tonqua, or tonka beans, and vanilla beans, of the products of such country or colony, for such time as he shall deem just; and in such case and during such suspension duties shall be levied, collected, and paid upon coffee, tea, and tonquin, tonqua, or tonka beans, and vanilla beans, the products or exports, direct or indirect, from such designated country, as follows:

On coffee, 3 cents per pound.

On tea, 10 cents per pound.

On tonquin, tonqua, or tonka beans, 50 cents per pound; vanilla beans, \$2 per pound; vanilla beans, commercially known as cuts, \$1 per pound.

SEC. 4. That whenever the President of the United States, by and with the advice and consent of the Senate, with a view to secure reciprocal trade with foreign countries, shall, within the period of two years from and after the passage of this Act, enter into commercial treaty or treaties with any other country or countries concerning the admission into any such country or countries of the goods, wares, and merchandise of the United States and their use and disposition therein, deemed to be for the interests of the United States, and in such treaty or treaties, in consideration of the advantages accruing to the United States therefrom, shall provide for the reduction during a specified period, not exceeding five years, of the duties imposed by this Act, to the extent of not more than 20 per centum thereof, upon such goods, wares, or merchandise as may be designated therein of the country or countries with which such treaty or treaties shall be made as in this section provided for; or shall provide for the transfer during such period from the dutiable list of this Act to the free list thereof of such goods, wares, and merchandise, being the natural products of such foreign country or countries and not of the United States; or shall provide for the retention upon the free list of this Act during a specified period, not exceeding five years, of such goods, wares, and merchandise now included in said free list as may be designated therein; and when any such treaty shall have been duly ratified by the Senate and approved by Congress, and public proclamation made accordingly, then and thereafter the duties which shall be collected by the United States upon any of the designated goods, wares, and merchandise from the foreign country with which such treaty has been made shall, during the period provided for, be the duties specified and provided for in such treaty, and none other.

1894

SEC. 71. That section three of an Act approved October first, eighteen hundred and ninety, entitled "An Act to reduce the revenue and equalize duties on imports, and for other purposes," is hereby repealed; but nothing herein contained shall be held to abrogate, or in any way affect such reciprocal commercial arrangements as have been heretofore made and now exist between the United States and foreign countries, except where such arrangements are inconsistent with the provisions of this Act.

SEC. 3. That with a view to secure reciprocal trade with countries producing the following articles, and for this purpose, on and after the first day of January, eighteen hundred and ninety-two, whenever, and so often as the President shall be satisfied that the Government of any country producing and exporting sugars, molasses, coffee, tea, and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States, which in view of the free introduction of such sugar, molasses, coffee, tea, and hides into the United States he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this Act relating to the free introduction of such sugar, molasses, coffee, tea, and hides, the production of such country, for such time as he shall deem just, and in such case and during such suspension duties shall be levied, collected, and paid upon sugar, molasses, coffee, tea, and hides, the product of or exported from such designated country, as follows, namely:

All sugars not above number thirteen Dutch standard in color shall pay duty on their polariscopic tests as follows, namely:

1890

All sugars not above number thirteen Dutch standard in color, all tank bottoms, sirups of cane juice or of beet juice, melada, concentrated melada, concrete and concentrated molasses, testing by the polariscope not above seventy-five degrees, seven-tenths of 1 cent per pound; and for every additional degree or fraction of a degree shown by the polariscopic test, two hundredths of 1 cent per pound additional.

All sugars above number thirteen Dutch standard in color shall be classified by the Dutch standard of color, and pay duty as follows, namely:

All sugars above number thirteen and not above number sixteen Dutch standard of color, 1½ cents per pound.

All sugars above number sixteen and not above number twenty Dutch standard of color, 1½ cents per pound.

All sugars above number twenty Dutch standard of color, 2 cents per pound.

Molasses testing above fifty-six degrees, 4 cents per gallon.

Sugar drainings and sugar sweepings shall be subject to duty either as molasses or sugar, as the case may be, according to polariscopic test.

On coffee, 3 cents per pound.

On tea, 10 cents per pound.

Hides, raw or uncured, whether dry, salted, or pickled, Angora goat-skins, raw, without the wool, unmanufactured, asses' skins, raw or unmanufactured, and skins, except sheepskins, with the wool on, 1½ cents per pound.

1883 (No corresponding provision.)

PROCLAMATIONS UNDER SECTION 2, ACT 1909.

Universal Application of Minimum Tariff Under Section 2, Tariff Act of August 5, 1909.—The President has given the minimum tariff universal application. In case it shall be found subsequently that, through inadvertence, some territory from which a dutiable importation seeks admission into the United States has not been covered by proclamation, it will be possible for the President to issue the proclamation in time for the entry of the goods at the minimum tariff rates.—Dept. Order (T. D. 30484).

DECISIONS UNDER THE ACT OF 1909.

Expiration of Reciprocity Agreement—Sunday.—In computing the time wherein the law requires an act to be done, if the last day falls on Sunday, unless there is some statutory provision excluding that day, the courts have no power to extend the time beyond the period fixed by law. *Schefer v. Magone* (47 Fed. Rep., 872), *Johnson v. Meyers* (54 Fed. Rep., 417), *Hermann v. U. S.* (66 Fed. Rep., 721).

The reciprocity agreement with France under the provisions of section 4 of the tariff act of 1909 and the notice given by the President pursuant thereto, terminating on Sunday, merchandise arriving on the following day is dutiable at the regular rate.—T. D. 31202 (G. A. 7149).

DECISIONS UNDER THE ACT OF 1897.

APPEAL FROM CIRCUIT COURT TO SUPREME COURT.—In a revenue case which involves not only questions of classification and amount of duty thereunder but also a question under section 5, act of March 3, 1891 (26 Stat., 827), the Supreme Court will review a decision of a circuit court. The act of May 27, 1908 (35 Stat., 403; T. D. 29044), does not operate to prevent an appeal to the Supreme Court in cases really involving the Constitution of the United States or the construction of a treaty.

TREATY.—The reciprocal commercial agreement with France (30 Stat., 1774; T. D. 19405) *Held* to be a "treaty" within the meaning of section 6, act of March 3, 1891.

CAST BRONZE BUST.—A bronze bust cast in a foundry by artisans from a model made in some plastic material by an artist, and upon which metal casting the artist has done little or no retouching, *Held* not to be included in the term statutory in section 3, tariff act of 1897.—*Altman v. U. S.* (U. S.), T. D. 32589; T. D. 29856 (C. C.) and (G. A. 6813) T. D. 29279 affirmed.

Favored-Nation Clause—Reciprocity Agreements.—By a convention of December 22, 1815, the terms of which, through subsequent agreements, remain in full force and effect, it was stipulated by and between the United States and His Britannic Majesty that "no higher or other duties shall be imposed on the importation into the United States of any article the growth, produce, or manufacture of His Britannic Majesty's territories in Europe than are or shall be payable on the like articles being the growth, produce, or manufacture of any other foreign country." In pursuance of a provision contained in the tariff act of 1897, looking to the arrangement of commercial agreements in which reciprocal and equivalent concessions might be secured in favor of the products and manufactures of the United States, a commercial agreement between the United States and the Republic of France was negotiated and proclaimed June 1, 1898, in which it was reciprocally agreed that during the life of the agreement certain articles named therein should be admitted at designated rates on importation from one of the countries to the other. Among the articles so designated brandies or other spirits manufactured or distilled from grain or other materials were to be subject to a duty of \$1.75 per gallon. The appellants subsequent to the date of this trade agreement with France imported into the United States from England certain whiskies and other spirituous liquors, and assert here that the favored-nation clause in the existing convention between this country and Great Britain applies and that they are entitled to an allowance on their importation from England of the same rate of duty they would be entitled to if their importation had been brought in from France, namely, \$1.75 per gallon. The goods were assessed at the port of

New York at \$2.25 per proof gallon, under paragraph 292, tariff act of 1897. *Held*, a reciprocity agreement is based on reciprocal considerations moving from each party thereto to the other, separate obligations being assumed in return for benefits granted; and other countries, not parties to the agreement, bearing in no sense the burden of the obligations, can not properly be taken to share in the accruing benefits. It would be, in the case at bar, to concede to Great Britain without a consideration what was conceded to France only on a consideration if these goods were permitted entry at the rate fixed in the French agreement; and the consignment was dutiable as assessed under paragraph 292, tariff act of 1897. *Bertram v. Robertson* (122 U. S., 116) and *Whitney v. Robertson* (124 U. S., 190).—*Shaw et al. v. U. S.* (Ct. Cust. Appls.), T. D. 31500; (Abs. 22091 and 22116) T. D. 30095 affirmed.

Country of Actual Exportation.—Champagne produced in France, exported from that country to Great Britain without a then existing intent on the part of either party to the transaction to export from France to the United States, followed by storage of the goods, assumed to be in a bonded warehouse in London, and by the owner there subsequently sold to importers in the United States to fill an order, the compliance with which did not specify or require champagne produced in France, and without any intent on the part of the importer in this country to import from France here, is not an importation from France to the United States under the provisions of the reciprocity agreement concluded between that country and this January 28, 1908.

It seems that an ex parte affidavit taken abroad for the purpose of introducing the same before the Board of General Appraisers may not be competent evidence before this court.—*Acker, Merrill & Condit v. U. S.* (Ct. Cust. Appls.), T. D. 31481; (G. A. Ab. 20749) T. D. 29597 affirmed.

Jamaica Rum—When a Product of France.—Where certain rum was imported from the West Indies into France, and was there subjected to a process of manufacture such as to change its nature and character and transform it into a spirituous beverage of a different kind, the new creation may properly be regarded as a product of France rather than of the West Indies; and when exported from France it is entitled to the benefits of the reciprocity agreement between France and the United States, promulgated by the President on March 30, 1898 (30 U. S. Stat., 1744; T. D. 19405), and in force at the time the article arrived in this country.

Generally, if raw material is imported from another country and undergoes a process of manufacture in the country where it arrives, it is justly regarded as a product of the latter country where manufactured within the meaning of said reciprocity agreement.—T. D. 31314 (G. A. 7172).

French Products Exported from Great Britain.

ONUS ON IMPORTERS.—The right to the reduced rates of duty provided for by the commercial reciprocity treaty (T. D. 28721) made with France under the authority conferred by section 3, tariff act of 1897, accrues only on merchandise both produced in and exported directly from said country. And it is incumbent on the importers to furnish satisfactory evidence that these conditions coexist.

EXPORTS FROM GREAT BRITAIN AS DISTINGUISHED FROM FRENCH EXPORTS.—Where goods are produced in France and are shipped from there to London, England, without bills of lading showing that the merchandise was intended to be transhipped at London to the New York consignees in good faith, without any contingency of diversion, and such articles are subsequently exported immediately from Great Britain to this country on invoices made out at London, the importations will be regarded as being exported from that country and not directly from France.

GOODS IN FOREIGN BONDED WAREHOUSES.—It is immaterial that the goods were originally exported from bonded warehouse in France, or were placed in bond in Great Britain when there, prior to being imported into the United States, they being subject to the control of the London shippers, and practically having entered into the commerce of that jurisdiction.—T. D. 30490 (G. A. 7004).

Country of Origin.—Merchandise imported via Belgium was found to be of German origin and to have been imported directly from Germany, and was therefore held subject to the reciprocal commercial agreement with the latter country.

Where an importer appears before the Board of General Appraisers and gives evidence as to the matter at issue, he is not precluded from the introduction of further evidence on appeal to the circuit court under section 15, customs administrative act of 1890.—*Wolff v. U. S. (C. C.)*, T. D. 29677; *Ab. 8757 (T. D. 26818)* reversed.

Leakage of Wine.

CONSTITUTIONAL POINT.—The contention that paragraph 296, tariff act of 1897, forbidding "constructive or other allowance for leakage on wines," contravenes the constitutional provisions that duties shall be uniform and that property shall not be taken without due process of law, is held not to give the Supreme Court jurisdiction of an appeal from the circuit court, under section 5, act of March 3, 1891 (26 Stat., 827), relating to cases that involve the application of the Constitution.

"**TREATY.**"—It is inferential from the decision in this case that a reciprocal commercial agreement negotiated with a foreign country under section 3, tariff act of 1897, is not a "treaty" within the meaning of section 5, act of March 3, 1891 (26 Stat., 827), which gives the right of appeal from the circuit court to the Supreme Court in cases in which the "construction of any treaty is drawn in question."—T. D. 28517 (C. C.) and *Ab. 16973* affirmed.

Under paragraph 296, tariff act of 1897, forbidding "constructive or other allowance for leakage on wines," the collector may not make any reduction of duty for shortage where the arrival of less than the normal quantity is due to loss by leakage.

Section 3, tariff act of 1897, provides that the President may, on the proclamation of reciprocal commercial agreements with foreign countries, "suspend the imposition and collection of the duties mentioned in this act" on wines, etc. *Held*, that it is the intent of the law to reduce the duty on the articles covered by the agreements, and that such suspension does not relate to the proviso in paragraph 296 of said act, forbidding "constructive or other allowance for leakage on wines."—*Shaw v. U. S. (C. C.)*, T. D. 28517.

Statuary.—The provision for "statuary" in section 3, tariff act of 1897, and in the reciprocal commercial agreements negotiated under said section, is subject to paragraph 454 of said act, prescribing that "the term 'statuary' as used in this act shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal." Bronze statuary, not being within this definition, is not subject to the reciprocal commercial agreement with Italy (31 Stat., 1979; T. D. 22373).—*Richard v. U. S. (C. C. A.)*, T. D. 28601; (151 Fed. Rep., 954) T. D. 27948 affirmed.

Fruits in Spirits—Excess of Alcohol—French Reciprocity.—Where figs and other fruits preserved in spirits are imported from France into the United States, and are assessed for duty under paragraph 263, tariff act of 1897, the excess of spirits or alcohol over 10 per cent containing the fruit is subject to

duty at \$1.75 per proof gallon, under the provisions of the reciprocal commercial agreement with France (30 Stat., 774; T. D. 19405), enumerating spirits manufactured or distilled from grain or other materials, and is not dutiable at \$2.50 per proof gallon. *La Manna v. U. S.* (144 Fed. Rep., 683; T. D. 27069), reversing *La Manna v. U. S.* (T. D. 25920), followed.—T. D. 27256 (G. A. 6331).

The duty of \$1.75 per proof gallon which is provided in the reciprocal commercial agreement with France (30 Stat., 1774; T. D. 19405) on "spirits manufactured or distilled from grain or other materials," supersedes, with regard to fruit in spirits imported from France, the duty of \$2.50 per proof gallon "on the alcohol contained therein in excess of 10 per cent," provided in paragraph 263, tariff act of 1897.—*La Manna v. U. S.* (C. C. A.), T. D. 27069; T. D. 25920 (C. C.) reversed.

Amer Picon.—*Held*, that "Amer Picon," an article manufactured by Picon & Co., of Bordeaux, France, and exported from France, is a "spirit" within the meaning of that term as used in section 3, tariff act of 1897, and is entitled to the benefit of the reduced rate of duty of \$1.75 per proof gallon, under the reciprocity agreement with France.—*Mouquin Co. v. U. S.* (T. D. 26868) followed.—T. D. 27063 (G. A. 6281).

Reciprocity.

RIGHT TO REDUCED DUTY—ORIGIN OF MERCHANDISE.—Under the reciprocal commercial agreement with France right to the reduced duties provided therein accrues only on merchandise both produced in and imported directly from that country. It is incumbent upon the importers to furnish satisfactory evidence that these conditions exist.

The deposition of an importer, made without any personal knowledge other than the fact that he ordered certain merchandise from an establishment in France, and that it was sent to him from the place in France in which the establishment is located, is incompetent to prove that the merchandise was produced in and exported from France, so as to be subject to the reduced rate of duty provided in the French reciprocal commercial agreement.—*Migliavacca Wine Co. v. U. S.* (C. C.), T. D. 26777.

Marble Fountain.—A marble fountain, so called, consisting of a group representing two reclining human figures, surrounded by a marble basin, the figures constituting the most prominent and significant feature of the work, held to be dutiable as "statuary," under section 3, tariff act of 1897, and the reciprocal commercial agreement with France (T. D. 19405).

Accessory appliances for throwing streams of water over the group and illuminating it to heighten its effect, but which are not incorporated with it structurally, held to be separate articles for duty purposes.—T. D. 26247 (G. A. 6008).

Favored-Nation Clause—Swiss Treaty.—From and after the denunciation by the United States of Articles VIII to XII in the treaty between this country and Switzerland of November 25, 1850, goods imported from Switzerland to the United States are not entitled to the reciprocity rates provided for in the agreements with Italy and other countries, but are subject to duty at the ordinary rates provided for in the act of July 24, 1897. T. D. 22092; *Luyties Bros.' case*, G. A. 4765 (T. D. 22494), and *Luyties Bros. v. U. S.*, suit 3143 (T. D. 25901).—T. D. 26239 (G. A. 6000).

Fernet Bitters, produced in and exported from Italy, held to fall within the purview of the reciprocal agreement between Italy and the United States, proclaimed by the President on July 18, 1900 (31 U. S. Stat., 1979). *Mouquin Restaurant & Wine Co. v. U. S.* (reported in T. D. 25868) followed.—T. D. 26208 (G. A. 5983).

Paintings in Oil or Water Colors.

DYED TAPESTRY.—Pictures in colors upon cotton canvas or tapestry, produced by applying aniline dyes with a brush by hand, are not "paintings in oil or water colors" within the meaning of section 3, tariff act of 1897, but are dutiable as manufactures of cotton under paragraph 322.

So-CALLED "TABERNACLE."—An article described in the invoice as a "tabernacle," reported by the appraiser to be composed of wood with figures painted upon the doors, the whole being gilded, held not to be a painting within the meaning of said section 3. Classification as an article composed in part of metal under paragraph 193 affirmed.—T. D. 26183 (G. A. 5974).

To be entitled to the reduced rate of duty provided for in the reciprocity agreement between the United States and France, an oil painting must have been painted in and imported from France. But it is not necessary that such painting should have been painted by a French artist.

Evidence reviewed and held to establish that the paintings in question were painted in France.—T. D. 25943 (G. A. 5890).

Champagne—Reciprocity With France.—Champagne is not within the terms of the French reciprocity agreement (30 U. S. Stat., 1774; T. D. 19405) providing for the entry into this country of various articles at reduced rates of duty.—T. D. 25824 (G. A. 5864).

Paintings in Mineral Colors on china and porcelain, fixed by firing, are not paintings in oil or water colors and are not subject to benefit, as such, by virtue of a reciprocal agreement between the United States and a foreign country under section 7, act of July 24, 1897. They are dutiable at 60 per cent ad valorem under paragraph 95 and not at 20 per cent under paragraph 454 of the present tariff act.—*Bour et al. v. U. S.* (91 Fed. Rep., 533) cited and followed.—T. D. 25761 (G. A. 5842).

Excessive Sea Stores.—Still wine from Italy, which forms part of the excess of sea stores of a vessel, is entitled to the reduced rates of duty prescribed by the Italian reciprocity agreement, when entered for consumption under article 107 of the general Treasury regulations.—T. D. 25692 (G. A. 5815).

Liqueurs.—Under the terms of the reciprocity treaties with Germany (31 U. S. Rev. Stat., 1978; T. D. 22353) and Italy (31 U. S. Rev. Stat., 1979; T. D. 22373), cordials and other spirituous beverages of the kind described in paragraph 292, tariff act of 1897, are entitled to entry at \$1.75 per proof gallon, instead of at \$2.25 per proof gallon as prescribed in said paragraph 292. *U. S. v. Wile* (130 Fed. Rep., 331; T. D. 25223) followed.—T. D. 25442 (G. A. 5736).

French Cordials.—Cordials and other spirituous beverages described in paragraph 292, tariff act of 1897, imported from France, are within the provision for "spirits manufactured or distilled from grain or other materials," in section 3 of said tariff act, and are subject to the reduced rate of duty provided for such spirits in the reciprocal commercial agreement with France (30 Stat., 1774), negotiated under the authority of said section.—T. D. 25425 (G. A. 5722).

Favored-Nation Clause of British Treaty.—Merchandise the growth, product, or manufacture of Great Britain, imported into the United States, can not obtain the benefit of the rates of duty imposed on like goods from France, Germany, and Italy, by virtue of the "favored-nation" clause in the treaty between the United States and Great Britain of July 3, 1815, coupled with the commercial agreements made between the United States and the other countries named.—T. D. 25260 (G. A. 5670).

Cordials.—Reciprocal commercial agreements made with foreign countries under the authority of section 3, tariff act of July 24, 1897, can not legally extend the scope of said section.

Cordials imported from France are within the provision for "spirits manufactured or distilled from grain or other materials," in section 3, tariff act of July 24, 1897, and are subject to the reduced rate of duty provided for such spirits in the reciprocal commercial agreement with France (30 Stat., 1774; T. D. 19405) negotiated under the authority of said section.—U. S. v. Wile (C. C. A.), T. D. 25223.

Place of Exportation.—A bill of lading for certain merchandise was made out in Switzerland, but the invoice was certified by a United States consul in France, and the evidence showed France to have been the country of production and from which the merchandise was exported. *Held*, that the importation was within the reciprocal commercial agreement between France and the United States (30 Stat., 1774; T. D. 19405) negotiated under the authority of section 3, tariff act of July 24, 1897.—U. S. v. Luyties (C. C. A.), T. D. 25222.

Italian Wine Imported from Germany.—Italian wine imported from Germany is dutiable at the appropriate rate under paragraph 296, tariff act of July 24, 1897. Such wine is not entitled to the benefit of the lower duty provided by the treaty with Italy, promulgated by the President July 18, 1900, when the same has been first shipped from Italy to another country and has become mingled with the commerce of that country and from the latter country imported into the United States.—T. D. 24971 (G. A. 5568).

Crude Tartar from Algeria.

RECIPROCAL AGREEMENT WITH FRANCE—ALGERIA.—Article 1 of the agreement between the United States and France, proclaimed August 22, 1902 (T. D. 23954), which was amendatory of and additional to the reciprocal commercial agreement proclaimed May 28, 1898 (30 Stat., 1774; T. D. 19405), and provided that the earlier agreement "shall apply also to Algeria," was intended to have a prospective operation only.

POLITICAL QUESTION.—In regard to the reciprocal commercial agreement between the United States and France, proclaimed May 28, 1898 (30 Stat., 1774; T. D. 19405), which provided for reduced rates of duty on merchandise "the product of the soil or industry of France," it was arranged by the Governments of the two countries to settle the question whether Algeria was a part of France within the meaning of the agreement, by an abandonment of the contention on the part of France that it was so included, together with an acceptance in lieu thereof of an additional agreement extending the benefits of the original agreement to Algeria. *Held*, that this arrangement is binding on the courts, and that merchandise from Algeria imported into the United States before such arrangement was made is not subject to the reduced rates of duty provided on such merchandise when imported from France proper.—U. S. v. Tartar Chemical Co. (C. C. A.), T. D. 24947.

Gauge of Vermuth.—Section 3, tariff act of July 24, 1897, relates to vermuth imported in cases of "one dozen bottles containing each not more than one quart" and provides that "any excess beyond these quantities found in such bottles shall be subject to a duty of 4 cents per pint or fractional part thereof." *Held*, that this provision contemplates that the additional duty of 4 cents per pint shall be assessed according to the number of bottles containing an excessive quantity, and not according to the total excess per case.—T. D. 24858 (G. A. 5518).

Statuary—Italian Reciprocity Agreement.—The provision for “statuary” in section 3, tariff act of 1897, and the reciprocal commercial agreement with Italy (T. D. 22373) made pursuant thereto and reducing the regular rate of duty, has the same meaning as in paragraph 454, which defines the term “statuary” wherever occurring in the act.

A terra-cotta bas-relief is not within said provisions, bas-relief not being statuary, within the meaning of the law, and the provisions being limited to statuary made from specified materials, viz, marble, stone, alabaster, or metal. In re Sheldon, G. A. 5225 (T. D. 24048) ; In re Sheldon, G. A. 563 (T. D. 11204) followed.

Said bas-relief is dutiable at 45 per cent ad valorem, under paragraph 97, as an article composed of earthy substance, decorated, and not as decorated earthenware, at 60 per cent ad valorem, under paragraph 95. Being enumerated in paragraph 97, it is not dutiable as statuary by similitude. *Wolff v. U. S.* (71 Fed. Rep., 291).

The benefits of said commercial agreement with Italy extend only to products of Italy exported therefrom, and do not include Italian products exported from France. In re La Montagne, G. A. 4538 (T. D. 21565) ; In re Fishel et al., G. A. 5002 (T. D. 23315) ; In re Florida Brewing Co., G. A. 5065a (T. D. 23473a), followed.

Held, that the importer will not be heard to deny the fact of exportation from France, having entered his goods upon an invoice made and consulated at Paris, which is declared upon entry to be in all respects correct and true ; following In re Wakem, G. A. 5152 (T. D. 23754) ; In re Spaulding, G. A. 5254 (T. D. 24152).—T. D. 24247 (G. A. 5286).

French Brandy From Habana.—To be entitled to the benefits of the reciprocal commercial agreement with that country (T. D. 19405), merchandise shipped from France must not be diverted at an intermediate port in such way as to become part of the commerce of another country. In re Booth (G. A. 4719) ; In re La Montagne (G. A. 4538) followed.

Mere transshipment is not such a diversion. *Gant v. Peaslee* (2 Curt., 250 ; 9 Fed. Cas., 1143) ; In re Hermann (G. A. 4751).

Brandy purchased in Habana, Cuba, brought there from France and thence to the United States, and entered upon a Habana invoice, must be deemed an exportation from Cuba, unless a contrary inference is justified by all the facts. A French consular invoice made after the goods arrived in this country, and an ex parte affidavit and customs declarations by interested parties, are not sufficient evidence of a continuous transit from France, with transshipment at Habana.—T. D. 23473a (G. A. 5065a).

Conditions Precedent to Right to Benefit.—Under section 3, tariff act of 1897, providing for the negotiation of reciprocal commercial agreements between the United States and other countries, it is necessary that merchandise, in order to be entitled to the benefit of such an agreement, must be both exported from and produced in the country with which the agreement is made. In re Hermann (G. A. 4751) distinguished.—T. D. 23315 (G. A. 5002).

Boonekamp Bitters.—The provision in the reciprocal commercial agreement existing between Germany and the United States relating to “brandies, or other spirits manufactured or distilled from grain or other materials,” held to be limited to the articles covered by a similar provision in paragraph 289, tariff act of 1897, for “brandy and other spirits manufactured or distilled from grain or other materials.” Accordingly, Boonekamp bitters, being dutiable under paragraph 292 of said act as “bitters,” are not embraced in said provision of

the agreement in question. In *re* Nicholas (G. A. 4311) followed; *Nicholas v. U. S.* (suit 2654, not reported) distinguished.—T. D. 23192 (G. A. 4968).

Most-Favored-Nation Clause—Political Questions.—A promise in a treaty that the products of one country shall not be subjected to a higher rate of duty than like products imported into the United States from other countries, addresses itself to the political and not to the judicial department of the Government, and the courts can not try the question whether it has been observed or not. *Taylor v. Morton* (23 Fed. Cas., 784) followed.—T. D. 23166 (G. A. 4956).

Merchandise in Bond—French Reciprocity Treaty.—Merchandise remaining in bonded warehouse after June 1, 1898, of the kind described in the reciprocal commercial agreement with France (30 U. S. Stat., 1774), is entitled to the benefits of said agreement.—T. D. 22805 (G. A. 4865).

Liqueurs Imported from Switzerland.—Absinthe and kirschwasser, of the kind passed on in board decision *In re* Luyties Bros. (G. A. 4753), known in France and in this country as liqueurs, when produced in Switzerland and imported therefrom since March 24, 1900, are not entitled to the benefits of the reduced rates provided by the reciprocal commercial agreement between France and the United States, proclaimed by the President on May 30, 1898; the so-called "most favored nation" clauses of the treaty between Switzerland and the United States, of November 25, 1850 (U. S. Stat. L., 43 Cong., pp. 748-751), having been abrogated on March 24, 1900, and ceasing thereafter to have any operation or effect.—T. D. 22494 (G. A. 4765).

Merchandise known in France and this country as liqueurs, including absinthe and kirschwasser, of the kind passed on in board decision *In re* Chapuis (G. A. 4736), when products of Switzerland and imported from that country, are entitled to the benefits of the reduced rates provided by the reciprocal commercial agreement between France and the United States proclaimed by the President on May 30, 1898, by virtue of the so-called "most favored nation" clauses of the treaty between Switzerland and the United States, of November 25, 1850 (U. S. Stat. L., 43d Cong., pp. 748-751), the terms of said treaty having been recognized by both the State and Treasury Departments of the United States as entitling such products of Switzerland to the privileges claimed.—T. D. 22449 (G. A. 4753).

French Products Exported via England.—Merchandise produced in France and exported from that country via England, being simply transshipped at Liverpool, held to be a direct importation from France and entitled to the benefit conferred by the reciprocal commercial agreement between that country and the United States, as it appears that the merchandise was in good faith destined for the United States at the time of original shipment, without any contingency of diversion.—T. D. 22447 (G. A. 4751).

Liqueurs (Cordials, Absinthe, and Kirschwasser).—Merchandise known in France and this country as liqueurs, and bought and sold under that name, which includes besides various cordials, absinthe, and kirschwasser, is entitled to the benefit of the reduced rate of \$1.75 per gallon provided in the reciprocal commercial agreement entered into between France and the United States, which was proclaimed by the President of the United States May 30, 1898 (30 Stat., 1774). *Nicholas v. U. S.* and *Chaufour v. U. S.* (suits 2854 and 2936, T. D. 22314) followed. In *re* Nicholas (G. A. 4311) reversed.—T. D. 22401 (G. A. 4736).

Products of France Imported from Great Britain.—Brandy, a product of France, which is imported into the United States from Great Britain, is not entitled to the reduced rate of duty provided for in the reciprocal commercial

arrangement made with France and negotiated under the provisions of section 3, tariff act of 1897, promulgated by the President's proclamation of May 30, 1898 (30 U. S. Stat., 1774).

It would seem that a different rule would prevail when goods are exported from France via any port of Great Britain or other country on invoices certificated in France.—T. D. 21565 (G. A. 4538).

Reciprocity with France—Colonies.

IMPORTS FROM COLONIES.—Brandy or other spirits of the kind embraced in paragraph 289, tariff act of 1897, imported from Martinique, a colony of France, are not entitled to the reduced rates of duty which are accorded to such merchandise produced in and exported from France by the terms of the reciprocal commercial agreement with that country and referred to in the President's proclamation of May 30, 1898, issued under the provisions of section 3 of said tariff act of 1897 (S. 19405; 30 U. S. Stat., p. 1774).

MARTINIQUE EXCLUDED FROM PRESIDENT'S PROCLAMATION, MAY 30, 1898.—The omission to embrace the colonies of France expressly, or by necessary implication, in the terms of said agreement and proclamation construed to confine the benefits thereof to the country of France only, exclusive of her colonies.—T. D. 21564 (G. A. 4537).

The President's proclamation concerning reciprocal commercial arrangements between this country and France, issued under the authority of section 3, tariff act of 1897, and dated May 30, 1898 (Department Circular No. 93, Synopsis 19405), went into effect "on and after the 1st day of June, 1898," and can not be construed to have any retrospective operation, so as to affect the rates of duty on goods imported from France and entered for consumption prior to said June 1, 1898, although the entries were liquidated by the collector subsequent to said date. *Held*, accordingly, that paintings in oil or water colors, still wines, and other products or manufactures of France, named in section 3, tariff act of 1897, and in said proclamation, which were imported and entered for consumption prior to June 1, 1898, are not entitled to the reduced rates of duty provided for by the terms of said proclamation.—T. D. 20350 (G. A. 4309).

Chartreuse imported from France held to be entitled to the benefit of the reduced rate of duty on "brandies or other spirits" provided for in the reciprocal commercial agreement with France.—*Nicholas v. U. S.*, 122 Fed. Rep., 892.

DECISIONS UNDER THE ACT OF 1890.

Coffee, Raw or Uncured Hides, Deerskins, and Goatskins.—Coffee, raw-hides, goatskins, etc., exported from Colombia or Venezuela subsequent to March 15, 1892 (under the tariff act of October 1, 1890), held not to be free of duty under paragraph 543 or 605 of said act, by reason of the President's proclamation of March 15, 1892 (27 Stat., 1010-1013), issued under section 3 of said tariff act, and suspending the operation of said act pro tanto for purposes of commercial reciprocity. In *re Amsinck & Co. et al.*, G. A. 1960 (affirmed in *De Lima v. United States Circuit Court*, Southern District of New York, December, 1897), followed; and *Field v. Clark*, 143 U. S., 649.—T. D. 18796 (G. A. 4063).

Free Entry of Goods from Countries with Which Reciprocity Does Not Exist.—Coffee and hides exported from Venezuela and Colombia after March 15, 1892, the date of the proclamation of the President (27 Stat., 1010, T. D. 12492), are dutiable. Such articles exported before the proclamation but imported after March 15, 1892, are not dutiable.—T. D. 13766 (G. A. 1960).

Constitutionality.—The authority conferred upon the President by section 3, act of 1890, to suspend by proclamation the free introduction of sugar, molasses, coffee, tea, and hides, when he is satisfied that any country producing such articles imposes duties or other exactions upon agricultural or other products of the United States, which he may deem to be reciprocally unequal and unreasonable, is not open to the objection that it unconstitutionally transfers legislative power to the President; but even if it were it does not follow that other parts of the act imposing duties upon imported articles are inoperative.

That Congress can not delegate legislative powers to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution.—*Field v. Clark*, 143 U. S., 649, 680, 692.

Taro Flour from Hawaiian Islands.—The merchandise is taro flour claimed to be exempt from duty under the reciprocity treaty with the Hawaiian Islands.

Taro flour is not enumerated in the schedule of articles to be admitted free. The protest, therefore, must be and is overruled.—*T. D. 14237 (G. A. 2201)*.

1913 **B.** That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on the eleventh day of December, nineteen hundred and two, or the provisions of the Act of Congress heretofore passed for the execution of the same except as to the proviso of article eight of said treaty, which proviso is hereby abrogated and repealed.

1909 **SEC. 3.** That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on the eleventh day of December, nineteen hundred and two, or the provisions of the Act of Congress heretofore passed for the execution of the same.

DECISIONS UNDER THE ACT OF 1913.

Cuban Sugars.—Collectors instructed to admit Cuban sugar on and after March 1, 1914, at a reduction of 20 per cent from the rates in paragraph 177, tariff act of 1913.—*Dept. Order (T. D. 34214)*.

DECISIONS UNDER THE ACT OF 1909.

Transshipment of Merchandise.—To secure the benefit of the reduced rate provided for in Article II of the treaty with Cuba promulgated by the President December 27, 1903, for merchandise which has been transshipped at a foreign port, it must be shown that the merchandise did not enter into or become a part of the commerce of that country.—*T. D. 34125 (G. A. 7529)*.

Scrap Iron.—Importers claimed, first, that old scrap iron imported from Cuba was entitled to admission free of duty as "articles the growth, produce, or manufacture of the United States;" and, second, that the scrap iron was a product of the soil or industry of Cuba and therefore entitled to a reduction of 20 per cent from the regular rate by virtue of the commercial convention with that country.

As to the first claim, *Held*, that it was incumbent on the importers to show not only that this scrap iron was goods the growth, produce, or manufacture of the United States, but to show as well in the manner prescribed by the Treasury regulations that they were the articles originally exported from this country, and, further, that they had not been advanced in value or improved

in condition. They failed to do this and the goods were not entitled to free entry.

As to the second claim, *Held*, that there was no evidence in the record showing that the merchandise was a product of the soil or industry of Cuba.—*U. S. v. Morton B. Smith Co.* (Ct. Cust. Appls.), T. D. 33918; (G. A. Ab. 31854) T. D. 33304 reversed.

Scrap iron, the result of wear and tear in the pursuit of various industries in the Republic of Cuba, is a product of the industry of that country within the meaning of Article II of a convention entered into between the United States and the Republic of Cuba March 31, 1903 (T. D. 24836), and as such should be assessed for duty when imported into the United States at a reduction of 20 per cent of the regular rate provided therefor.—T. D. 33116 (G. A. 7419).

DECISIONS UNDER THE ACT OF 1897.

Preferential Duty.—In the Cuban commercial convention (33 Stat., 2136; T. D. 24836) Article II (33 Stat., 2137) provides that Cuban goods shall be admitted at a reduction from the duty provided by the tariff act of 1897 "or as may be provided by any tariff law of the United States subsequently enacted," and Article VIII (33 Stat., 2140) provides that "the rates of duty herein granted are and shall continue preferential in respect to all like imports from other countries." This treaty was signed and proclaimed subsequently to the decisions in *De Lima v. Bidwell* (182 U. S., 1), *U. S. v. Heinszen* (206 U. S., 370; T. D. 28237), and *Dooley v. U. S.* (183 U. S., 151), holding that the Philippines are not a foreign country. *Held*, that this means a reduction only from the regular tariff rates and not from the special rates provided in the Philippine tariff act.

The Philippines are not included in the term "other countries" used in Article VIII of the commercial convention between Cuba and the United States (33 Stat., 3140; T. D. 24836).

The word "country" in the revenue laws of the United States has always been construed to embrace all the possessions of a foreign state, however widely separated, which are subject to the same supreme executive and legislative control.—*Faber v. U. S.* (U. S.), T. D. 31709; T. D. 28542 (C. C.) affirmed.

In the Cuban commercial convention (33 Stat., 2136; T. D. 24836) Article II (33 Stat., 2137) provides that Cuban goods shall be admitted at a reduction from the duty provided by the tariff act of 1897 "or as may be provided by any tariff law of the United States subsequently enacted," and Article VIII (33 Stat., 2140) provides that "the rates of duty herein granted are and shall continue preferential in respect to all like imports from other countries." *Held*, that this means a reduction only from the regular tariff rates and not from the special rates provided in particular laws, such as the Philippine tariff act and the reciprocal commercial agreements.

The Philippines are not included in the term "other countries" used in Article VIII of the commercial convention between Cuba and the United States (33 Stat., 2140; T. D. 24836).—*Faber v. U. S.* (C. C.), T. D. 28542; (G. A. 6520) T. D. 27847 affirmed.

Date of Effect—Retroactive Operation.—The Cuban reciprocal treaty of December 17, 1903 (33 Stat., 2136; T. D. 24836), had no retroactive effect, and merchandise was not subject to its provisions when entered before that date.—*Dalton v. U. S.* (C. C.), T. D. 27974; (G. A. 5989) T. D. 26214 affirmed.

Postponement by President.—The postponement for 10 days of the time when the Cuban reciprocal treaty (33 Stat., 2136; T. D. 24836) of December 17,

1903, should take effect, as proclaimed by the President, was valid, and merchandise imported after said date and before December 27, 1903, was not subject to the provisions of the treaty.—*U. S. v. Dalton* (C. C.), T. D. 27973.

Cuban Treaty Not in Effect Until December 27, 1903.

DUTY ON CUBAN IMPORTS.—The treaty of reciprocity of December 11, 1902, made between the United States and the Republic of Cuba, did not take effect until December 27, 1903, the date proclaimed by the President of the United States and the President of the Cuban Republic for the commencement of its operation.

SAID TREATY NOT RETROSPECTIVE.—Said treaty can not be construed to be retrospective in its operation, so as to entitle importers of merchandise to the 20 per cent reduction of the duties imposed by the tariff act of July 24, 1897, or to otherwise affect importations made and entered for consumption prior to said date of December 27, 1903.

DUTIES ON WITHDRAWALS FROM BONDED WAREHOUSES.—Imported merchandise is subject to the rate of duty in force at the time of its withdrawal from a bonded warehouse for consumption and not to the rate of duty in force at the time of the liquidation of the entries. Act of June 10, 1890 (sec. 20), as amended by the act of December 15, 1902, following *U. S. v. American Sugar Refining Co.* (202 U. S., 563; 26 Sup. Ct. Rep., 717; T. D. 27410) and the *Franklin Sugar Refining Co. v. U. S.* (202 U. S., 580; 26 Sup. Ct. Rep., 720; T. D. 27412).—T. D. 27555 (G. A. 6415).

Date of Effect.—Under the reciprocity treaty between the United States and Cuba (33 Stat., 2136; T. D. 24836), approved by the act of December 17, 1903 (33 Stat., 1; T. D. 24836), imports from Cuba were not entitled to the reduction of duties provided therein until December 27, 1903, the date proclaimed by the President of the United States and the President of Cuba for the commencement of the operation of the treaty.—*Franklin Sugar Refining Co. v. U. S.* (U. S.), T. D. 27412.

The treaty with Cuba (33 Stat., 2136; T. D. 24836), reducing the duties on merchandise imported from that country, did not take effect April 10, 1903, 10 days after the exchange of ratifications, nor on December 17, 1903, when approved by act of Congress (33 Stat., 3; T. D. 24836), but on December 27, 1903, the date proclaimed by the Presidents of the United States and Cuba (33 Stat., 2136; T. D. 24836).

There is a presumption against retrospective legislation, and words in a statute ought not to have such operation unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature can not be otherwise satisfied.—*U. S. v. American Sugar Refining Co.* (U. S.), T. D. 27410.

Cuban Tobacco in Bond.—Where tobacco which is the production of Cuba is imported into the United States and placed in bonded warehouse, and remains there for over three years from the date of the original importation, such goods are regarded as abandoned to the Government under section 2971 of the Revised Statutes, and the rights and liabilities of both the Government and importer as to the question of duties are fixed at the time of such abandonment.

The subsequent promulgation of the reciprocity treaty with Cuba, reducing the regular rates of duty by 20 per cent, does not affect such importation.

The importation is not taken out of the operation of this general rule by an extension of time made by the Treasury Department within which such tobacco may be sold as abandoned property or within which duties were to be paid.—T. D. 26991 (G. A. 6259).

Goods in Bonded Warehouse—Effect of Treaty.—Imported tobacco which has been produced in and exported from Cuba, and which has been placed in public stores or bonded warehouse and has remained there three years without being withdrawn is regarded as abandoned to the Government and may be sold under such regulations as the Secretary of the Treasury may prescribe and the proceeds paid into the Treasury, under the provisions of section 2971 of the Revised Statutes, which is held not to have been repealed by section 20, customs administrative act, June 10, 1890, as amended by the act of December 15, 1902, or by any provision of the present tariff act of 1897. *Mosle v. Bidwell* (130 Fed. Rep., 334; T. D. 25276).

The convention between the United States and the Republic of Cuba having been proclaimed by the President, and put in force and becoming operative on December 17, 1903, during the period of the three years while such merchandise remained in bond and prior to the date of abandonment, the dutiable character of such tobacco is governed by the provisions of such treaty. The rights and liabilities of both the Government and the importers were fixed at the time of such abandonment. *Anglo-California Bank v. Secretary of Treasury* (76 Fed. Rep., 742; 22 C. C. A., 527).

A protest claiming that such tobacco is subject to a reduction of 20 per cent of the rates of duty provided for in paragraph 213, tariff act of 1897, under the provisions of said treaty, held to be tenable and will be sustained.—T. D. 26386 (G. A. 6051).

Sugar From Cuba.—Article 2 of the treaty between the United States and the Republic of Cuba of December, 1903 (T. D. 24836), providing that the products of the soil or industry of Cuba imported into the United States "shall be admitted at a reduction of 20 per cent of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted," has reference to the rates of duty prescribed by any general tariff law which may supersede the present Dingley act, and not to a special law like that governing our tariff relations with the Philippine Islands. (Act of Mar. 8, 1902; T. D. 23583.)

No sugar imported from the Republic of Cuba can be admitted into the United States at a reduction of duty greater than 20 per cent of the rates of duty provided thereon by the present tariff act of the United States approved July 24, 1897.—T. D. 26189 (G. A. 5980).

1913 C. That there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries: *Provided*, That all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty: *Provided, however*, That in consideration of the exemptions aforesaid, all articles, the growth, product, or manufacture of the United States, upon which no drawback of customs duties has been allowed therein, shall be admitted to the Philippine Islands from the United States free of duty: *And provided further*, That the free admission, herein provided, of such articles, the growth, product, or manufacture of the United States, into the Philippine Islands, or of the growth, product, or manufacture, as hereinbefore defined, of the Philippine Islands into the United States, shall be conditioned upon the direct shipment thereof, under a through bill of lading, from the country of origin to the country of destination: *Provided*, That direct shipment shall include shipments in bond through

foreign territory contiguous to the United States: *Provided, however,* That if such articles become unpacked while en route by accident, wreck, or other casualty, or so damaged as to necessitate their repacking, the same shall be admitted free of duty upon satisfactory proof that the unpacking occurred through accident or necessity and that the merchandise involved is the identical merchandise originally shipped from the United States or the Philippine Islands, as the case may be, and that its condition has not been changed except for such damage as may have been sustained: *And provided,* That there shall be levied, collected, and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands, a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps, to be provided by the Commissioner of Internal Revenue, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary of the Treasury, shall prescribe; and such articles, goods, wares, or merchandise, shipped from said islands to the United States, shall be exempt from the payment of any tax imposed by the internal-revenue laws of the Philippine Islands: *And provided further,* That there shall be levied, collected, and paid in the Philippine Islands, upon articles, goods, wares, or merchandise going into the Philippine Islands from the United States, a tax equal to the internal-revenue tax imposed in the Philippine Islands upon the like articles, goods, wares, or merchandise of Philippine Islands manufacture; such tax to be paid by internal-revenue stamps or otherwise, as provided by the laws in the Philippine Islands; and such articles, goods, wares, or merchandise going into the Philippine Islands from the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of the United States: *And provided further,* That in addition to the customs taxes imposed in the Philippine Islands, there shall be levied, collected, and paid therein upon articles, goods, wares, or merchandise imported into the Philippine Islands from countries other than the United States, the internal-revenue tax imposed by the Philippine Government on like articles manufactured and consumed in the Philippine Islands or shipped thereto for consumption therein, from the United States: *And provided further,* That from and after the passage of this Act all internal revenues collected in or for account of the Philippine Islands shall accrue intact to the general government thereof and be paid into the insular treasury: *And provided further,* That section thirteen of "An Act to raise revenue for the Philippine Islands, and for other purposes," approved August fifth, nineteen hundred and nine, is hereby repealed.

SEC. 5. That there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries: *Provided,* That, except as otherwise hereinafter provided, all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty, except rice, and except, in any fiscal year, sugar in excess of three hundred thousand gross tons, wrapper tobacco and filler tobacco when mixed or packed with more than 15 per centum of wrapper tobacco in excess of three hundred thousand pounds, filler tobacco in excess of one million pounds, and cigars in excess of one hundred and fifty million cigars, which quantities shall be ascertained by the Secretary of the Treasury under such rules and regulations as he shall prescribe: *And provided further,* That sugar, refined or unrefined, and tobacco, manufactured or unmanufactured, imported into the Philippine Islands from foreign countries, shall be dutiable at rates of import duty therein not less than the rates of import duty imposed upon sugar and tobacco in like forms when imported into the United States: *And provided further,* That, under rules and regulations to be prescribed by the Secretary of the Treasury, preference in the right of free entry of sugar to be imported into the United States

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from the Philippine Islands, as provided herein, shall be given, first, to the producers of less than five hundred gross tons in any fiscal year, then to producers of the lowest output in excess of five hundred gross tons in any fiscal year: *Provided, however*, That in consideration of the exemptions aforesaid, all articles, the growth, product, or manufacture of the United States, upon which no drawback of customs duties has been allowed therein, shall be admitted to the Philippine Islands from the United States free of duty: *And provided further*, That the free admission, herein provided, of such articles, the growth, product, or manufacture of the United States, into the Philippine Islands, or of the growth, product, or manufacture, as hereinbefore defined, of the Philippine Islands into the United States, shall be conditioned upon the direct shipment thereof from the country of origin to the country of destination: *Provided*, That direct shipment shall include shipments in bond through foreign territory contiguous to the United States: *Provided, however*, That if such articles become unpacked while en route by accident, wreck, or other casualty, or so damaged as to necessitate their repacking, the same shall be admitted free of duty upon satisfactory proof that the unpacking occurred through accident or necessity and that the merchandise involved is the identical merchandise originally shipped from the United States or the Philippine Islands, as the case may be, and that its condition has not been changed except for such damage as may have been sustained: *And provided further*, That all articles, the growth, product, or manufacture, as hereinbefore defined, of the Philippine Islands, admitted into the ports of the United States free of duty under the provisions of this section and shipped as hereinbefore provided from said islands to the United States for use and consumption therein, shall be hereafter exempt from the payment of any export duties imposed in the Philippine Islands: *And provided further*, That there shall be levied, collected, and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands, a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps, to be provided by the Commissioner of Internal Revenue, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary of the Treasury, shall prescribe; and such articles, goods, wares, or merchandise, shipped from said islands to the United States, shall be exempt from the payment of any tax imposed by the internal-revenue laws of the Philippine Islands: *And provided further*, That there shall be levied, collected, and paid in the Philippine Islands, upon articles, goods, wares, or merchandise going into the Philippine Islands from the United States, a tax equal to the internal-revenue tax imposed in the Philippine Islands upon the like articles, goods, wares, or merchandise of Philippine Islands manufacture; such tax to be paid by internal-revenue stamps or otherwise, as provided by the laws in the Philippine Islands, and such articles, goods, wares, or merchandise going into the Philippine Islands from the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of the United States: *And provided further*, That, in addition to the customs taxes imposed in the Philippine Islands, there shall be levied, collected, and paid therein upon articles, goods, wares, or merchandise, imported into the Philippine Islands from countries other than the United States, the internal-revenue tax imposed by the Philippine government on like articles manufactured and consumed in the Philippine Islands or shipped thereto, for consumption therein, from the United States: *And provided further*, That from and after the passage of this Act all internal revenues collected in or for account of the Philippine Islands shall accrue intact to the general government thereof and be paid into the insular treasury, and shall only be allotted and paid out therefrom in accordance with future acts of the Philippine Legislature, subject, however, to section seven of the Act of Congress approved July first, nineteen hundred and two, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes": *And provided further*, That, until action by the Philippine Legislature, approved by Congress, internal revenues paid into the insular treasury, as hereinbefore provided, shall be allotted and paid out by the Philippine Commission.

Act of March 8, 1902.

AN ACT Temporarily to provide revenue for the Philippine Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of an Act entitled "An Act to revise and amend the tariff laws of the Philippine Archipelago," enacted by the United States Philippine Commission on the seventeenth day of September, nineteen hundred and one, shall be and remain in full force and effect, and there shall be levied, collected, and paid upon all articles coming into the Philippine Archipelago from the United States the rates of duty which are required by the said Act to be levied, collected, and paid upon like articles imported from foreign countries into said archipelago.

SEC. 2. That on and after the passage of this Act there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Archipelago the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries: *Provided*, That upon all articles the growth and product of the Philippine Archipelago coming into the United States from the Philippine Archipelago there shall be levied, collected, and paid only 75 per centum of the rates of duty aforesaid: *And provided further*, That the rates of duty which are required hereby to be levied, collected, and paid upon products of the Philippine Archipelago coming into the United States shall be less any duty or taxes levied, collected, and paid thereon upon the shipment thereof from the Philippine Archipelago, as provided by the Act of the United States Philippine Commission referred to in section one of this Act, under such rules and regulations as the Secretary of the Treasury may prescribe, but all articles, the growth and product of the Philippine Islands, admitted into the ports of the United States free of duty under the provisions of this Act and coming directly from said islands to the United States for use and consumption therein, shall be hereafter exempt from any export duties imposed in the Philippine Islands.

SEC. 3. That on and after the passage of this Act the same tonnage taxes shall be levied, collected, and paid upon all foreign vessels coming into the United States from the Philippine Archipelago which are required by law to be levied, collected, and paid upon vessels coming into the United States from foreign countries: *Provided, however*, That until July first, nineteen hundred and four, the provisions of law restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from one port of the United States to another port of the United States shall not be applicable to foreign vessels engaging in trade between the Philippine Archipelago and the United States, or between ports in the Philippine Archipelago: *And provided further*, That the Philippine Commission shall be authorized and empowered to issue licenses to engage in lighterage or other exclusively harbor business to vessels or other craft actually engaged in such business at the date of the passage of this Act, and to vessels or other craft built in the Philippine Islands or in the United States and owned by citizens of the United States or by inhabitants of the Philippine Islands.

SEC. 4. That the duties and taxes collected in the Philippine Archipelago in pursuance of this Act, and all duties and taxes collected in the United States upon articles coming from the Philippine Archipelago and upon foreign vessels coming therefrom, shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund and paid into the treasury of the Philippine Islands, to be used and expended for the government and benefit of said islands.

SEC. 5. That when duties prescribed by this Act are based upon the weight of merchandise deposited in any public or private bonded warehouse, said duties shall be levied and collected upon the weight of such merchandise at the time of its entry.

SEC. 6. That all articles manufactured in bonded manufacturing warehouses in whole or in part of imported materials, or of materials subject to internal-revenue tax and intended for shipment from the United States to the Philippine Islands, shall, when so shipped, under such regulations as the Secretary of the Treasury may prescribe, be exempt from internal-revenue tax, and shall not be charged with duty except the duty levied under this Act upon imports into the Philippine Islands.

That all articles subject under the laws of the United States to internal-revenue tax, or on which the internal-revenue tax has been paid, and which may under existing laws and regulations be exported to a foreign country without the payment of such tax, or with benefit of drawback, as the case may be, may also be shipped to the Philippine Islands with like privilege, under such regulations and the filing of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue may, with the approval of the Secretary of the Treasury, prescribe. And all taxes paid upon such articles shipped to the Philippine Islands since November fifteenth, nineteen hundred and one, under the decision of the Secretary of the Treasury of that date, shall be refunded to the parties who have paid the same, under such rules and regulations as the Secretary of the Treasury may prescribe, and a sum sufficient to make such payment is hereby appropriated, out of any money in the Treasury not otherwise appropriated.

That where materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the shipment of said articles to the Philippine Archipelago a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties, under such rules and regulations as the Secretary of the Treasury may prescribe.

SEC. 7. That merchandise in bonded warehouse or otherwise in the custody and control of the officers of the customs, upon which duties have been paid, shall be entitled, on shipment to the Philippine Islands within three years from the date of the original arrival, to a return of the duties paid less one per centum, and merchandise upon which duties have not been paid may be shipped without the payment of duties to the Philippine Islands within said period, under such rules and regulations as may be prescribed by the Secretary of the Treasury.

SEC. 8. That the provisions of the Act entitled "An Act to simplify the laws in relation to the collection of revenues," approved June tenth, eighteen hundred and ninety, as amended by an Act entitled "An Act to provide for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, shall apply to all articles coming into the United States from the Philippine Archipelago.

SEC. 9. That no person in the Philippine Islands shall, under the authority of the United States, be convicted of treason by any tribunal, civil or military, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Approved March 8, 1902.

Dept. Order (23583).

DECISIONS UNDER THE ACT OF 1913.

Tobacco Products.—Collection of internal-revenue tax and affixing of customs-inspection stamps on tobacco products in the Philippine Islands.—Dept. Order (T. D. 35903).

Cigars and Cigarettes by Mail.—Fine not to be imposed on mail importations of cigars and cigarettes from the Philippine Islands.—Dept. Order (T. D. 34333).

Shipments To and From the Philippine Islands.—Collectors instructed relative to the provisions of paragraph C, section 4, tariff act of 1913, affecting shipments to and from the Philippine Islands.—Dept. Order (T. D. 33844).

DECISIONS UNDER THE ACT OF 1909.

Cigars and Cigarettes Not Legally Packed.—Section 2804, Revised Statutes, applied to cigars and cigarettes from the Philippine Islands. Instructions to customs officers. Opinion of the Attorney General.—Dept. Order (T. D. 31781).

Direct Shipment From the Philippines.—The importation was of sponges, and these, it appears, were dispatched, freight prepaid, from Zamboanga via Hongkong and Tacoma, Wash., to Chicago. They were delivered by the agents on board a vessel lying in or off the port of Hongkong. The evidence to this effect makes a *prima facie* showing that the goods were shipped direct, and there being no evidence to show there was any delay in the course of the shipment, the consignment was entitled to free entry under section 5, tariff act of 1909, governing articles the growth or product of the Philippine Islands. *U. S. v. United Cigar Stores Co.* (T. D. 31505).—*Rhodes v. U. S.* (Ct. Cust. Appls.), T. D. 31637; (G. A. Ab. 24523) T. D. 31182 reversed.

Cigars—Illegal Importation.—The protest in question is against the assessment of duty on 705 cigars imported from the Philippine Islands under paragraph 224, tariff act of 1909. There being less than 3,000 cigars in the package in question, it was held to be an illegal importation.—Ab. 35025 (T. D. 34279).

Philippine Cigars Transshipped at Hongkong, a Direct Shipment.—In the enactment of the provisions of the tariff act of 1909 that relate to commerce between the United States proper and the Philippine Islands, the Congress will be presumed to have had in mind the actual requirements of trade in the Philippines, as these may call for transshipment of merchandise; and having in view, too, the recognized benevolent intent of legislation affecting the archipelago, that shipment must be deemed a direct shipment from the Philippines to the United States when the consignment was forwarded on a through bill of lading from Manila to New York, but by reason of a trade requirement was transshipped at Hongkong; and so the goods fell within section 5, tariff act of 1909, making them free of duty.—*U. S. v. United Cigar Stores Co.* (Ct. Cust. Appls.), T. D. 31505; (G. A. 7026) T. D. 30643 affirmed.

Philippine Cigars—Direct Shipment.

SECTION 5, TARIFF ACT OF 1909.—Section 5 of the tariff act of 1909 contemplates reciprocal relations between the Philippine Islands and the United States, and is to be construed as reciprocity statutes have hitherto been construed by the judicial tribunals of the United States.

"DIRECT SHIPMENT."—The provision for direct shipment was placed in the law with the object of safeguarding the purpose of Congress to admit free of duty within any one year 150,000,000 cigars manufactured in the Philippine Islands. Cigars consigned by a through bill of lading from Manila to New York, but transferred in the harbor of Hongkong from one vessel to another, constitute a "direct shipment" within the meaning of section 5 of the tariff act of 1909.—T. D. 30643 (G. A. 7026).

DECISIONS UNDER STATUTES PRIOR TO THE ACT OF 1909.

Importations from United States into Philippines.

CONGRESSIONAL RATIFICATION OF EXACTION OF DUTIES.—Congress had the power to ratify the collection of duties imposed by the Philippine government on importations into the Philippines subsequent to the acquisition of those islands by the United States; and under the act of June 30, 1906 (34 Stat., 636), ratifying the collection of all duties prior to March 8, 1902, duties are not recoverable that were paid on importations from the United States.

RETROACTIVE LEGISLATION.—Where an agent of the United States has without precedent authority exercised in the name of the United States a power which Congress has the right to bestow, Congress may ratify and confirm such unauthorized act and thus retroactively give it validity when rights of other parties have not intervened.

DELEGATION OF LEGISLATIVE AUTHORITY.—In dealing with the Philippines, Congress has power to delegate legislative authority to such agencies as it may select.

RETROACTIVE LEGISLATION—TEST OF VALIDITY.—In testing the validity of an act of Congress ratifying the imposition of duties previously collected, an important consideration in favor of such validity is that although the duties were illegally exacted, the illegality was not the result of an inherent want of power to have authorized the imposition, but simply arose from the failure to delegate to the collecting officials the authority essential to give immediate validity to their enforcement of the payment of duties.

DUE PROCESS OF LAW.—The act of June 30, 1906 (34 Stat., 636), ratifying the previous imposition of duties on importations into the Philippines, does not violate the fifth amendment to the Constitution by requiring the taking of property without due process of law.

COMMENCEMENT OF SUIT.—The fact of the commencement of a suit against the Government for duties illegally exacted does not affect the power of Congress to ratify the exactions by causing the statute to become repugnant to the fifth amendment to the Constitution prohibiting the taking of property without due process of law.

Appeal from the United States Court of Claims.—*U. S. v. Heinszen* (U. S.), T. D. 28237.

Importations into Philippines from United States.—The act of July 1, 1902 (32 Stat., 691), ratifying the order of the President dated July 12, 1898, under which duties were collected by the Philippine government on merchandise imported into the Philippines from the United States after they had passed into American possession, related only to collections made prior to the exchange of ratifications of the treaty of peace with Spain, April 11, 1899. The right to levy duties on merchandise brought from the United States ceased at the time of such exchange, though military occupation still continued.—*Lincoln v. U. S.* (U. S.), T. D. 27413.

The order of the President dated July 12, 1898, that "upon the occupation of any ports and places in the Philippine Islands by the forces of the United States," duties should be levied and collected "as a military contribution," was a measure taken with reference alone to the war with Spain, and did not extend to the period including the subsequent insurrection in those islands; it was intended to deal with imports from foreign countries only, and duties exacted on importations from New York into Manila, after the exchange of the ratifications of the treaty of peace with Spain (30 Stat., 1754), April 11, 1899, were not subject to such duties.

The act of July 1, 1902 (32 Stat., 691-2), ratifying the action of the President in his order of July 12, 1898, approved the action of the authorities only so far as in accordance with the provisions of such order, and did not extend to the imposition of duties on merchandise imported into Manila from New York after the exchange of ratifications of the treaty of peace with Spain (30 Stat., 1754), which was not authorized by such order.

After the title to the Philippines passed to the United States there was nothing in the insurrection there of sufficient gravity to give to the islands the character of foreign countries within the meaning of a tariff act.—*Lincoln v. U. S.* (U. S.), T. D. 26393.

Philippine Products Imported from Another Country.—To entitle a commodity which is the product of the Philippine Archipelago to admission to the ports of the United States at 75 per cent of the regular tariff duties, such commodity must be exported direct from the Philippine Islands, or, if through some other country, nothing more than transshipment must have taken place in such country.

Where such commodity has been exported from the Philippine Islands to some other country, and there mingled with the commerce of that country, and from there exported to the United States, it is not entitled to the low rate provided for in section 2 of the act of March 8, 1902.—T. D. 25510 (G. A. 5761).

Philippine Islands Not Foreign Territory After April 11, 1899.—Merchandise is not imported from a foreign country, within the meaning of the tariff laws, until it actually arrives at a port of entry of the United States, and it is dutiable under the law in force at the time of its arrival. Goods which left the Philippine Islands before the ratification of the treaty with Spain by which the islands were ceded to the United States, but which did not arrive at a port of entry of the United States until after the treaty took effect, were not subject to duty.—*American Sugar Refining Co.*, 124 Fed. Rep., 677.

Merchandise imported from the Philippine Islands subsequent to the ratification of the treaty of peace between the United States and Spain April 11, 1899, to wit, in September, 1900, was not legally liable to any duty, said islands having ceased to be foreign territory within the meaning of the tariff laws at the date of the ratification. *De Lima v. Bidwell* (182 U. S., 1) reaffirmed and applied.—14 Diamond Rings, 183 U. S., 176.

D. That articles, goods, wares, or merchandise going into Porto Rico from the United States shall be exempted from the payment of any tax imposed by the internal-revenue laws of the United States.

1909 (No corresponding provision.)

Drawback on Flavoring Extracts, etc., When Shipped to Porto Rico or the Philippine Islands.—*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all provisions of existing laws for the allowance of drawback of internal-revenue tax on articles exported from the United States are, so far as applicable, hereby extended to like articles upon which an internal-revenue tax has been paid when shipped from the United States to the island of Porto Rico or to the Philippine Islands.

Approved March 4, 1915.—Dept. Order (T. D. 35316).

E. That whenever any country, dependency, colony, province, or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the

1913

1913 same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties.

1909 SEC. 6. That whenever any country, dependency, colony, province or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties.

1897 SEC. 5. That whenever any country, dependency, or colony shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, or colony, and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties.

1894 (No corresponding provision.)

1890 (No corresponding provision.)

1883 (No corresponding provision.)

DECISIONS UNDER THE ACT OF 1913.

Countervailing Duty on British Spirits.

Certain British spirits known as "orange bitters" to be classified as "British compounded spirits" and countervailing duties assessed accordingly under T. D. 34466.—Dept. Order (T. D. 35668).

BRITISH EXCISE LAW.—The Government of Great Britain makes an allowance to the exporter of 3d. on plain spirits and 5d. on compound spirits upon the exportation of the same. Held to be a bounty or grant within the meaning of those words as used in paragraph E of section 4, tariff act of 1913.

CONFLICT BETWEEN DEPARTMENTAL AND JUDICIAL CONSTRUCTION.—Congress in reenacting a preexisting statute will be held to have intended that it should

have the meaning given it by the courts rather than that given it by the department where the same may be in conflict.—T. D. 35595 (G. A. 7758).

British Spirits—Correct Method of Determining the Number of British Proof Gallons.—The proper calculation is as follows: 215.625 U. S. gallons of spirit of 89 degrees proof= $215.625 \times .89$ =191.906 U. S. proof gallons, and $191.906 \div 1.374$ =139.67 British proof gallons.—Dept. Order (T. D. 35089).

Classification of British Spirits for the Assessment of Countervailing Duty.—The British commissioner of customs and excise has stated that but one article, namely, whisky (Scotch, Irish, and all other brands), receives upon exportation from Great Britain the lower allowance of 3d. per gallon, all other spirits not methylated spirits coming under the head of "compounded" and receiving the higher allowance of 5d. upon exportation from Great Britain.—Dept. Order (T. D. 34752).

DECISIONS UNDER THE ACT OF 1909.

Fruits, Dried or Candied, and Combed Wool or Tops, the Product of the Commonwealth of Australia.—Collectors of customs are, therefore, hereby instructed that, in accordance with the provisions of section 6 of the tariff act of August 5, 1909, additional duties equivalent to the export bounties paid by the Commonwealth of Australia upon the said articles should be collected thereon when imported either directly or indirectly from that country.—Dept. Order (T. D. 33726).

Toquilla Straw From Panama.—Countervailing duty under section 6, tariff act of 1909, equivalent to the export bounty paid, to be collected on toquilla straw, the product of the Republic of Panama.—Dept. Order (T. D. 33699).

Fish, the Product of French Fisheries.—The department is in receipt, by reference from the Secretary of State, of a dispatch from the American consul at St. Pierre, transmitting a translation of certain paragraphs in a decree of the President of the French Republic, promulgated Nov. 9, 1911, wherein are enumerated the various classes of fish entitled to the bounty published in T. D. 31994.—Dept. Order (T. D. 32936).

Export Bounty Bestowed by the German Government on Certain Articles.—Under the German import certificate ordinance of March 1, 1906, and amendments thereto, it is the practice of the German Government to issue what are designated as import certificates on the exportation of rye, various kinds of wheat, barley, oats, buckwheat, beans, peas, lentils, rapeseed, flour (both wheat and rye), split peas, barley malt, and oils produced from oilseeds. These certificates are issued whether the exported article has been imported or is of German growth or has been produced from imported materials or materials of German origin, and are receivable in payment of duties on grain, flour, and other imports.—Dept. Order (T. D. 32768). Amended in T. D. 33953 and T. D. 33975.

Spirits the Product of the United Kingdom of Great Britain and Ireland.—It appears from certain laws of the United Kingdom of Great Britain and Ireland, copies of which have been transmitted to the department by the Secretary of State, that export bounties are paid by that country as follows:

On "plain British spirits," "spirits of the nature of spirits of wine," and "methylated spirits," 3 pence per gallon, computed by hydrometer proof.

On "British compounded spirits" 5 pence per gallon, computed at hydrometer proof.

You are hereby instructed to collect additional duties under section 6 of the tariff act of August 5, 1909, accordingly, whether the spirits be imported directly or indirectly.

The department is advised that 1 gallon of British proof spirit (ascertained always with Sykes's hydrometer) is equal to 1.2009 United States gallons of spirit, 114.4 per cent United States proof, or 1.374 United States proof gallons.—Dept. Order (T. D. 31229).

Fish the Product of the St. Pierre and Other French Fisheries.—Additional duty under section 6, tariff act of 1909, equivalent to the export bounty paid, to be collected on dried haddock the product of the French fisheries.—Dept. Order (T. D. 30371).

Additional duty under section 6, tariff act of 1909, equivalent to the export bounty paid, to be collected on dried cod the product of the French fisheries.—Dept. Order (T. D. 30220). (See also T. D's. 31994 and 32936).

DECISIONS UNDER THE ACT OF 1897.

Sugar.—A change in the weight of imported sugar resulting from natural evaporation only is not a change in its condition by "remanufacture or otherwise."

The Secretary of the Treasury was empowered by law to make all needful regulations for the assessment and collection of a countervailing duty imposed by the tariff act of 1897 on sugar imported into this country from a country where a bounty had been paid and regardless of any possible change in the weight on a consignment of sugar from Germany after its importation, the established regulations of the Treasury Department then in force controlled the shipment, and the countervailing duty, accordingly, was properly assessed on the actual or landed weight.—U. S. v. Franklin Sugar Refining Co. (Ct. Cust. Appls.), T. D. 31659; (G. A. Ab. 14351) T. D. 27892 affirmed.

Petroleum Products.

PROVISO IN PARAGRAPH 626, TARIFF ACT OF 1897.—In the interpretation of a statute, whenever possible, effect will be given to all parts of the act, even though to do this enlarges or limits the stricter meaning of some provision in the act, and though paraffin is free of duty, according to one paragraph of the tariff act of 1897, paraffin oil produced from petroleum must be taken to have been included by intent in paragraph 626 of that act, the proviso to which makes crude petroleum or its products subject to a countervailing duty and to be dutiable under said paragraph 626.

"COUNTRY," MEANING IN A REVENUE LAW.—The word "country," as employed in the revenue laws of the United States, embraces and applies to all the territorial possessions of a foreign state, however widely separated, which are subject to the same supreme executive and legislative control.

HAMBURG FREE ZONE.—The free zone in Hamburg is in the German Customs Union; it is not a "country" in the sense that term is employed in the proviso to paragraph 626, tariff act of 1897, and in the matter of customs duties it is to be regarded as a part of the German Empire.—Sonneborn Sons v. U. S. (Ct. Cust. Appls.), T. D. 31504; (G. A. 7013) T. D. 30569 affirmed.

COUNTERVAILING DUTY.—Under paragraph 626, tariff act of 1897, duty should be assessed upon paraffin, a product of petroleum, coming from Germany at a rate equal to that imposed by Germany upon paraffin exported thereto from the United States. U. S. v. Downing (146 Fed. Rep., 56; T. D. 27025); *Bergeresch's case*, G. A. 6405 (T. D. 27507).

"COUNTRY;" MEANING IN REVENUE LAW.—It is a general rule in construing revenue laws that the word "country," when used in a statute of the United States, relates to that sovereignty with which, in its international relations, our Government can treat, and that the word is meant to embrace all of the terri-

tory and possessions of any given country which contribute to its existence as a nation. The word "country" in paragraph 626, tariff act of 1897, must therefore be held to embrace all of the possessions of the German Empire which come under its supreme executive and legislative authority. *Stairs v. Peaslee* (18 How., 521); *Jackson's case*, G. A. 1007 (T. D. 12145).

CONSTRUCTION OF STATUTE.—In construing a statute the principle that the law looks to the substance and not the form may be invoked, and the statute examined to ascertain the real purpose the Government sought through the law to accomplish. *Holy Trinity Church v. U. S.* (143 U. S., 457).

PURPOSE OF PROVISIO OF PARAGRAPH 626, TARIFF ACT OF 1897.—The purpose manifest in the proviso of paragraph 626, tariff act of 1897, is to accord the privilege of free entry of petroleum and its products to such countries only as grant free entry to like commodities produced or manufactured in the United States.

FREE PORT OF HAMBURG.—The free port of Hamburg is not a "country" within the meaning of that word as used in the proviso of paragraph 626, tariff act of 1897.—T. D. 30569 (G. A. 7013).

Sugar.—Under the tariff act of 1897, the Secretary of the Treasury possessed full authority to assess and collect duties imposed by law to countervail foreign-paid bounties, and his determination, as of the date of the importation itself, of the amount of bounty granted on an exportation of raw-beet sugar from Germany and imported here is not open to collateral attack and is final. *Cramer v. Arthur* (102 U. S., 612) cited and approved.—*Franklin Sugar Refining Co. v. U. S.* (Ct. Cust. Appls.), T. D. 31276; Ab. 11009 (T. D. 27309) affirmed.

Sugar Bounty.

ASSISTANT SECRETARIES OF TREASURY—RIGHT TO PERFORM DUTIES OF SECRETARY.—Under sections 245 and 161, Revised Statutes, providing, respectively, that "Assistant Secretaries of the Treasury shall perform such duties in the office of the Secretary of the Treasury as may be prescribed by the Secretary or by law," and that "in case of absence of the head of any department the first or sole assistant shall perform the duties of such head," it is clear that the Secretary of the Treasury could require an Assistant Secretary to "ascertain, determine, and declare" the amount of bounties prescribed by foreign countries, which was a duty given "the Secretary of the Treasury" by section 5, tariff act of 1897; and where an Assistant Secretary has issued a declaration under said section 5 it will be presumed in the absence of evidence to the contrary that he was performing a duty in accordance with law and that the declaration was properly issued.

FINALITY OF ASCERTAINMENT BY SECRETARY OF TREASURY.—Where a published declaration by the Secretary of the Treasury as to the amount of sugar bounty, as authorized by section 5, tariff act of 1897, was followed by another declaration, but there was nothing to indicate that the latter was issued for the purpose of correcting the former, evidence is not admissible to show that the former declaration was wrong. Findings made by the Secretary under the authority of said section are binding upon collectors of customs, the Board of General Appraisers, and the courts, and an importer's only remedy is by appeal to the Secretary himself.

TIME OF ACCRUAL.—The countervailing duty assessed on account of sugar bounty, under section 5, tariff act of 1897, is dutiable according to the rate in force at the time of importation; and the promulgation of a new rate between the time of importation and of liquidation does not affect the amount of countervailing duty applicable.

DATE OF IMPORTATION.—The date of importation is undoubtedly the date of the arrival of the merchandise in a port of entry of the United States and not the date of liquidation or even of entry.—*Franklin Sugar Refining Co. v. U. S. (C. C.)*, T. D. 30494; *Ab. 11009 (T. D. 27309)* affirmed.

CORRECTNESS OF TREASURY DETERMINATION.—A Treasury declaration as to the amount of sugar bounty allowed by a foreign country, under section 5, tariff act of 1897, which was properly issued and was in effect at the time of the importation of sugars, is presumably correct and can not be impeached or inquired into by the courts.—*Franklin Sugar Refining Co. v. U. S. (C. C.)*, T. D. 30493; *Ab. 10013 (T. D. 27087)* affirmed.

DUTIABLE WEIGHT.—In construing section 5, tariff act of 1897, providing that "upon the importation" of merchandise on which a bounty has been paid by the country of production "there shall be levied an additional duty equal to the net amount of such bounty," *Held*, as to sugar on which a bounty had been allowed at a certain rate per 100 kilograms, that the additional duty should be assessed at such rate upon the basis of the weight of sugar actually imported, without regard to the amount exported on which bounty had been allowed.

"CHANGED IN CONDITION."—Section 5, tariff act of 1897, prescribing the assessment of a countervailing duty on imported merchandise on which a foreign bounty has been allowed, "whether the same has been changed in condition by remanufacture or otherwise," means such remanufacture or other change as brings a bounty-aided product into a classification different from that in which it originally belonged, so that the merchandise may be followed into any article into which it may have been incorporated and the countervailing duty levied on the importation thereof. Diminution in weight is not such a changed condition as is contemplated. *Franklin Sugar Refining Co. v. U. S. (142 Fed. Rep., 376; T. D. 27027)*, reversing 137 *Fed. Rep., 655; T. D. 26318*, and *T. D. 23503 (G. A. 5072)*, and in effect overruling *T. D. 21938 (G. A. 4637)*, followed.—*T. D. 27864 (G. A. 6524)*.

Wood Pulp from New Brunswick.—Chemical wood pulp, exported from the Province of New Brunswick, Dominion of Canada, is not subject to an additional or countervailing duty under the proviso to paragraph 393, tariff act of 1897.

The Province of New Brunswick imposes no export duty upon pulp wood or round timber exported to any part of the world.—*T. D. 24998 (G. A. 5583)*.

Wood Pulp from Nova Scotia.—There is no export duty on pulp wood exported to the United States imposed either by the Dominion of Canada or the Province of Nova Scotia, and wood pulp manufactured in Nova Scotia from wood grown in that province is not subject to the additional or countervailing duty provided in paragraph 393, tariff act of July 24, 1897, for such merchandise when exported from "any country or dependency" imposing "an export duty on pulp wood exported to the United States."—*T. D. 24798 (G. A. 5484)*.

Wood Pulp From Canada.—The laws and regulations of the Province of Quebec, Canada, levy a license tax of 40 cents per cord on pulp wood, cut on Crown lands, which is to be manufactured in Canada into wood pulp; but on pulp wood cut on Crown lands for manufacture outside of Canada, after exportation, the tax is 65 cents per cord. *Held*, that, in effect, this arrangement amounts to a levy by the Province of an export duty on pulp wood of 25 cents per cord.

The laws and regulations of the Province of Ontario prohibit absolutely the cutting of pulp wood on Crown lands, unless such wood is to be manufactured

into wood pulp in Canada. *Held*, that this arrangement does not operate as an export duty on such pulp wood.—T. D. 24306 (G. A. 5306).

Russian Sugar.

AUTHORITY OF SECRETARY OF TREASURY.—The question whether a country pays or bestows a bounty or grant upon the exportation of an article, within the meaning of section 5, tariff act of 1897, lies, in its initiative, with the Secretary of the Treasury.

JURISDICTION OF THE BOARD AND COURTS.—Where such a question involves the construction of the laws of the exporting country, it necessarily becomes a judicial one; and the board of classification and the United States courts have jurisdiction to review the Secretary's action, and to determine whether any bounty or grant is actually paid or bestowed. *Downs v. U. S.* (23 Sup. Ct. Rep., 222, affirming 113 Fed. Rep., 144; 51 C. G. A., 100) and *In re Downs*, G. A. 4912 (T. D. 22984).

BOUNTY ON SUGAR.—The Russian Government pays or bestows a bounty or grant on the exportation of "free sugar," so as to work a benefit or advantage to the exporter, first, by remitting or refunding the excise tax due upon the sugar, and, second, by issuing to the exporter a certificate of exportation, carrying with it a privilege of exemption from taxation, which certificate is transferable, and has a substantial market value. *Downs case* (supra).—T. D. 24355 (G. A. 5322).

French Sugar-Bounty Act of April 7, 1897.—This act construed, and held not applicable to a cargo of sugar contained in a vessel that sailed from France on the day the act was promulgated and became operative.—T. D. 24266 (G. A. 5294).

Sugar From the Netherlands.—The system in the Netherlands of imposing on sugar an excise tax, a deduction from which is allowed for the production of sugar, and of remitting on exportation the whole of the excise tax, without regard to the deduction made therefrom, results practically in the bestowal of a bounty or grant on the exportation of sugar, within the meaning of section 5, tariff act of 1897. Accordingly, sugar from the Netherlands is subject to an additional duty equaling the amount of the bounty. *In re Hills Bros. Co.* (G. A. 4261) and *U. S. v. Hills Bros. Co.* (107 Fed. Rep., 107) followed.—T. D. 23325 (G. A. 5012). —

Russian Sugar.

SECRETARY'S DETERMINATION OF AMOUNT OF BOUNTY CONCLUSIVE.—It seems that the decision of the Secretary of the Treasury as to the amount of any such bounty or grant is conclusive and not reviewable by this board or the courts. *U. S. v. Klingenberg* (153 U. S., 93; 14 Sup. Ct. Rep., 790); *Hadden v. Merritt* (115 U. S., 25) applied.

BOUNTY.—A "bounty" may be defined as any advantage or benefit conferred upon or compensation paid to a person or class of persons, the burden of which is borne, directly or indirectly, by the Public Treasury.

GRANT.—A "grant" implies the conferring by the sovereign power of some valuable privilege, franchise, or other right of like character, upon a corporation, person, or class of persons. It involves the idea of a favor conferred by Government, but does not necessarily embrace the act of appropriating money out of the Public Treasury.

EXEMPTION FROM TAXATION.—The privilege of exemption from taxation, as well as the remission or cancellation of a tax already assessed, may properly be considered a "grant." *Chicago, B. & K. C. R. R. v. Guffey* (120 U. S., 569); *Given v. Wright* (117 U. S., 656).

PURPOSE OF A STATUTE DETERMINED BY ITS EFFECT.—In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect. *Henderson v. The Mayor* (92 U. S., 259, 268.)

BOUNTY OF GRANT ON EXPORTATION OF SUGAR.—The Russian Government pays or bestows a bounty or grant upon the exportation of so-called "free sugar," so as to work a benefit or advantage to the exporter in two ways: (a) By remitting or refunding the excise tax due upon the sugar, and (b) by issuing to the exporter a certificate of exportation, carrying with it a privilege of exemption from taxation, which certificate is transferable, and has a substantial market value.—T. D. 22984 (G. A. 4912).

China Sugar.—Regulations of the Secretary of the Treasury under section 5, act of 1897 (Ss. 18373 and 19108), as to proof of identification held to be reasonable and authorized by law. (See *In re Dominici*, 78 Fed. Rep., 334.)

Countervailing Duties, Power to Determine.—Board may determine if there is export bounty or not, but if there is such bounty its estimate by the Secretary of the Treasury is conclusive.—T. D. 21501 (G. A. 4524).

F. Subsection 1. That all articles of foreign manufacture or production, which are capable of being marked, stamped, branded, or labeled, without injury, shall be marked, stamped, branded, or labeled in legible English words, in a conspicuous place that shall not be covered or obscured by any subsequent attachments, or arrangements, so as to indicate the country of origin. Said marking, stamping, branding, or labeling shall be as nearly indelible and permanent as the nature of the article will permit.

1913 All packages containing imported articles shall be marked, stamped, branded, or labeled so as to indicate legibly and plainly, in English words, the country of origin and the quantity of their contents, and until marked in accordance with the directions prescribed in this section no articles or packages shall be delivered to the importer.

Should any article or package of imported merchandise be marked, stamped, branded, or labeled so as not accurately to indicate the quantity, number, or measurement actually contained in such article or package, no delivery of the same shall be made to the importer until the mark, stamp, brand, or label, as the case may be, shall be changed so as to conform to the facts of the case.

The Secretary of the Treasury shall prescribe the necessary rules and regulations to carry out the foregoing provision.

SEC. 7. That all articles of foreign manufacture or production, which are capable of being marked, stamped, branded, or labeled, without injury, shall be marked, stamped, branded, or labeled in legible English words, in a conspicuous place that shall not be covered or obscured by any subsequent attachments or arrangements, so as to indicate the country of origin. Said marking, stamping, branding, or labeling shall be as nearly indelible and permanent as the nature of the article will permit.

1909 All packages containing imported articles shall be marked, stamped, branded, or labeled so as to indicate legibly and plainly, in English words, the country of origin and the quantity of their contents, and until marked in accordance with the directions prescribed in this section no articles or packages shall be delivered to the importer.

Should any article or package of imported merchandise be marked, stamped, branded, or labeled so as not accurately to indicate the quantity, number, or measurement actually contained in such article or package, no delivery of the same shall be made to the importer until the mark, stamp, brand, or label, as the case may be, shall be changed so as to conform to the facts of the case.

The Secretary of the Treasury shall prescribe the necessary rules and regulations to carry out the foregoing provision.

1897 **SEC. 8.** That all articles of foreign manufacture, such as are usually or ordinarily marked, stamped, branded, or labeled, and all packages containing such or other imported articles, shall, respectively, be plainly marked, stamped, branded, or labeled in legible English words in a

conspicuous place, so as to indicate the country of their origin and the quantity of their contents; and until so marked, stamped, branded, or labeled they shall not be delivered to the importer. Should any article of imported merchandise be marked, stamped, branded, or labeled so as to indicate a quantity, number, or measurement in excess of the quantity, number, or measurement actually contained in such article, no delivery of the same shall be made to the importer until the mark, stamp, brand, or label, as the case may be, shall be changed so as to conform to the facts of the case.

1897 **SEC. 5.** That all articles of foreign manufacture, such as are usually or ordinarily marked, stamped, branded, or labeled, and all packages containing such or other imported articles, shall, respectively, be plainly marked, stamped, branded, or labeled in legible English words, so as to indicate the country of their origin and the quantity of their contents; and until so marked, stamped, branded, or labeled they shall not be delivered to the importer. Should any article of imported merchandise be marked, stamped, branded, or labeled so as to indicate a quantity, number, or measurement in excess of the quantity, number, or measurement actually contained in such article, no delivery of the same shall be made to the importer until the mark, stamp, brand, or label, as the case may be, shall be changed so as to conform to the facts of the case.

1890 **SEC. 6.** That on and after the first day of March, eighteen hundred and ninety-one, all articles of foreign manufacture, such as are usually or ordinarily marked, stamped, branded, or labeled, and all packages containing such or other imported articles, shall, respectively, be plainly marked, stamped, branded or labeled in legible English words, so as to indicate the country of their origin; and unless so marked, stamped, branded, or labeled they shall not be admitted to entry.

1883 (No corresponding provision.)

DECISIONS UNDER THE ACT OF 1913.

Marking Country of Origin.—Enameled ware required to be permanently and indelibly marked to indicate the country of origin under subsection 1 of paragraph F of section 4 of the tariff act of 1913, except small articles packed six or more to the package and intended to be sold at retail in such package, in which case package to be marked. T. D. 30029 modified.—Dept. Order (T. D. 35649).

Marking of Books.—Books are required to be marked to indicate the country of origin under subsection 1 of paragraph F of section 4 of the tariff act of October 3, 1913.—Dept. Order (T. D. 34994).

Marking of Japanese Articles.—Articles produced in Japan and marked with the word "Nippon" legally marked under subsection 1 of paragraph F of section 4 of the tariff act of 1913.—Dept. Order (T. D. 34740).

DECISIONS UNDER THE ACT OF 1909.

Marking Covers—Catalogue.—Covers imported for use on catalogues of American manufacture must be marked so as to indicate country of origin under section 7, tariff act of 1909.—Dept. Order (T. D. 33315).

Marking Paper.—Paper sufficiently marked under section 7, act of 1909, where packages are marked to indicate the country of origin.—Dept. Order (T. D. 32011).

Marking of articles under section 7 of the tariff act of August 5, 1909.—Dept. Order (T. D. 30029).

DECISIONS UNDER THE ACT OF 1897.

Marking of Packages.—The marking, etc., of packages, etc., of imported goods required by paragraph 8, act of July 24, 1897, is a duty cast upon the

importer by said act, and a Treasury regulation (T. D. 20178), exacting compensation for such marking, etc., or supervision of the same by customs officials equal to the salary of the officials for the time so employed, no such charge to be for less than one-fourth of a day, is not excessive and is valid. *Iselin v. Hedden* (28 Fed. Rep., 416) and *Auffmordt v. Hedden* (30 Fed. Rep., 360) distinguished, and *Kennedy v. Magone* (158 U. S., 212) and *Cassado v. Schell* (33 Fed. Rep., 332) followed.

The Board of General Appraisers has jurisdiction to determine the legality of a Treasury regulation making charges for the supervision of such marking of packages, as it "relates to dealings with imported merchandise in the regular course of passing the same through the customhouse," and does not affect the "lawful entry, regular invoice or appraisalment" of the goods. In *re Chichester* (48 Fed. Rep., 281) followed.—T. D. 22496 (G. A. 4767).

1913 F. Subsection 2. If any person shall fraudulently violate any of the provisions of this Act relating to the marking, stamping, branding, or labeling of any imported articles or packages; or shall fraudulently deface, destroy, remove, alter, or obliterate any such marks, stamps, brands, or labels with intent to conceal the information given by or contained in such marks, stamps, brands, or labels, he shall upon conviction be fined in any sum not exceeding \$5,000, or be imprisoned for any time not exceeding one year, or both.

1909 SEC. 8. If any person shall fraudulently violate any of the provisions of this Act relating to the marking, stamping, branding, or labeling of any imported articles or packages; or shall fraudulently deface, destroy, remove, alter, or obliterate any such marks, stamps, brands, or labels with intent to conceal the information given by or contained in such marks, stamps, brands, or labels, he shall upon conviction be fined in any sum not exceeding \$5,000, or be imprisoned for any time not exceeding one year, or both.

1897 (No corresponding provision.)

1894 (No corresponding provision.)

1890 (No corresponding provision.)

1883 (No corresponding provision.)

1913 G. Subsection 1. That all persons are prohibited from importing into the United States from any foreign country any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever for the prevention of conception or for causing unlawful abortion, or any lottery ticket, or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles shall be proceeded against, seized, and forfeited by due course of law. All such prohibited articles and the package in which they are contained in the course of importation shall be detained by the officer of customs, and proceedings taken against the same as hereinafter prescribed, unless it appears to the satisfaction of the collector of customs that the obscene articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subsection.

1909 SEC. 9. That all persons are prohibited from importing into the United States from any foreign country any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever for the prevention of conception or for causing unlawful abortion, or any lottery ticket, or any advertisement of

any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles shall be proceeded against, seized, and forfeited by due course of law. All such prohibited articles and the package in which they are contained in the course of importation shall be detained by the officer of customs, and proceedings taken against the same as hereinafter prescribed, unless it appears to the satisfaction of the collector of customs that the obscene articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this section.

1897 Sec. 16. That all persons are prohibited from importing into the United States from any foreign country any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever for the prevention of conception or for causing unlawful abortion, or any lottery ticket, or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles shall be proceeded against, seized, and forfeited by due course of law. All such prohibited articles and the package in which they are contained in the course of importation shall be detained by the officer of customs, and proceedings taken against the same as hereinafter prescribed, unless it appears to the satisfaction of the collector of customs that the obscene articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this section.

1894 Sec. 10. That all persons are prohibited from importing into the United States from any foreign country any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever for the prevention of conception or for causing unlawful abortion, or any lottery ticket or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles shall be proceeded against, seized, and forfeited by due course of law. All such prohibited articles and the package in which they are contained in the course of importation shall be detained by the officer of customs, and proceedings taken against the same as hereinafter prescribed, unless it appears to the satisfaction of the collector of customs that the obscene articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this section.

1890 Sec. 11. All persons are prohibited from importing into the United States from any foreign country any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles shall be proceeded against, seized, and forfeited by due course of law. All such prohibited articles and the package in which they are contained in the course of importation shall be detained by the officer of customs, and proceedings taken against the same as prescribed in the following section, unless it appears to the satisfaction of the collector of customs that the obscene articles contained

1890 In the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this section.

1883 SEC. 2491. All persons are prohibited from importing into the United States from any foreign country any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion. No invoice or package whatever, or any part of one, in which any such articles are contained shall be admitted to entry; and all invoices and packages whereof any such articles shall compose a part are liable to be proceeded against, seized, and forfeited by due course of law. All such prohibited articles in the course of importation shall be detained by the officer of customs, and proceedings taken against the same as prescribed in the following section: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this section.

DECISIONS UNDER THE ACT OF 1909.

Lottery Matter.—So-called Panama "premium bonds" held to be lottery matter and prohibited importation under the provisions of section 9, act of August 5, 1909.—Dept. Order (T. D. 31411).

1913 G. Subsection 2. That whoever, being an officer, agent, or employee of the Government of the United States, shall knowingly aid or abet any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or means for preventing conception or procuring abortion, or other articles of indecent or immoral use or tendency, shall be deemed guilty of a misdemeanor, and shall for every offense be punishable by a fine of not more than \$5,000, or by imprisonment at hard labor for not more than ten years, or both.

1909 SEC. 10. That whoever, being an officer, agent, or employee of the Government of the United States, shall knowingly aid or abet any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or means for preventing conception or procuring abortion, or other articles of indecent or immoral use or tendency, shall be deemed guilty of a misdemeanor, and shall for every offense be punishable by a fine of not more than \$5,000, or by imprisonment at hard labor for not more than ten years, or both.

1897 SEC. 17. That whoever, being an officer, agent, or employee of the Government of the United States, shall knowingly aid or abet any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or means for preventing conception or procuring abortion, or other articles of indecent or immoral use or tendency, shall be deemed guilty of a misdemeanor, and shall for every offense be punishable by a fine of not more than \$5,000, or by imprisonment at hard labor for not more than ten years, or both.

1894 SEC. 11. That whoever, being an officer, agent, or employee of the Government of the United States, shall knowingly aid or abet any person engaged in any violation of any of the provisions of law prohibiting mail obscene or indecent publications or representations, or means for preventing conception or procuring abortion, or other articles of indecent

- 1894 or immoral use or tendency, shall be deemed guilty of a misdemeanor, and shall for every offense be punishable by a fine of not more than \$5,000, or by imprisonment at hard labor for not more than ten years, or both.

- 1890 SEC. 12. That whoever, being an officer, agent, or employee of the Government of the United States, shall knowingly aid or abet any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or means for preventing conception or procuring abortion, or other articles of indecent or immoral use or tendency, shall be deemed guilty of a misdemeanor, and shall for every offense be punishable by a fine of not more than \$5,000, or by imprisonment at hard labor for not more than ten years, or both.

- 1883 SEC. 2492. Whoever, being an officer, agent, or employee of the Government of the United States, shall knowingly aid or abet any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or means for preventing conception or procuring abortion, or other articles of indecent or immoral use or tendency, shall be deemed guilty of a misdemeanor, and shall for every offense be punishable by a fine of not more than \$5,000, or by imprisonment at hard labor for not more than ten years, or both.

- 1913 G. Subsection 3. That any circuit or district judge of the United States, within the proper district, before whom complaint in writing of any violation of the two preceding sections is made, to the satisfaction of such judge, and founded on knowledge or belief, and if upon belief, setting forth the grounds of such belief, and supported by oath or affirmation of the complainant, may issue, conformably to the Constitution, a warrant directed to the marshal or any deputy marshal in the proper district, directing him to search for, seize, and take possession of any such article or thing mentioned in the two preceding sections, and to make due and immediate return thereof, to the end that the same may be condemned and destroyed by proceedings, which shall be conducted in the same manner as other proceedings in the case of municipal seizure, and with the same right of appeal or writ of error.

- 1909 SEC. 11. That any judge of any district or circuit court of the United States, within the proper district, before whom complaint in writing of any violation of the two preceding sections is made, to the satisfaction of such judge, and founded on knowledge or belief, and if upon belief, setting forth the grounds of such belief, and supported by oath or affirmation of the complainant, may issue, conformably to the Constitution, a warrant directed to the marshal or any deputy marshal in the proper district, directing him to search for, seize, and take possession of any such article or thing mentioned in the two preceding sections, and to make due and immediate return thereof, to the end that the same may be condemned and destroyed by proceedings, which shall be conducted in the same manner as other proceedings in the case of municipal seizure, and with the same right of appeal or writ of error.

- 1897 SEC. 18. That any judge of any district or circuit court of the United States, within the proper district, before whom complaint in writing of any violation of the two preceding sections is made, to the satisfaction of such judge, and founded on knowledge or belief, and if upon belief, setting forth the grounds of such belief, and supported by oath or affirmation of the complainant, may issue, conformably to the Constitution, a warrant directed to the marshal or any deputy marshal in the proper district, directing him to search for, seize, and take possession of any such article or thing mentioned in the two preceding sections, and to make due and immediate return thereof, to the end that the same may be condemned and destroyed by proceedings, which shall be conducted in the same manner as other proceedings in the case of municipal seizure, and with the same right of appeal or writ of error.

SEC. 12. That any judge of any district or circuit court of the United States, within the proper district, before whom complaint in writing of any violation of the two preceding sections is made, to the satisfaction of such judge, and founded on knowledge or belief, and if upon belief, setting forth the grounds of such belief, and supported by oath or affirmation of the complainant, may issue, conformably to the Constitution, a

1894

warrant directed to the marshal or any deputy marshal in the proper district, directing him to search for, seize, and take possession of any such article or thing mentioned in the two preceding sections, and to make due and immediate return thereof, to the end that the same may be condemned and destroyed by proceedings, which shall be conducted in the same manner as other proceedings in the case of municipal seizure, and with the same right of appeal or writ of error.

1890

SEC. 2493. Any judge of any district or circuit court of the United States, within the proper district, before whom complaint in writing of any violation of the two preceding sections is made, to the satisfaction of such judge, and founded on knowledge or belief, and if upon belief, setting forth the grounds of such belief, and supported by oath or affirmation of the complainant, may issue, conformably to the Constitution, a

1883

H. Subsection 1: That the importation of neat cattle and the hides of neat cattle from any foreign country into the United States is prohibited: *Provided*, That the operation of this section shall be suspended as to any foreign country or countries, or any parts of such country or countries, whenever the Secretary of the Treasury shall officially determine, and give public notice thereof, that such importation will not tend

1913

to the introduction or spread of contagious or infectious diseases among the cattle of the United States; and the Secretary of the Treasury is hereby authorized and empowered, and it shall be his duty, to make all necessary orders and regulations to carry this section into effect, or to suspend the same as herein provided, and to send copies thereof to the proper officers in the United States and to such officers or agents of the United States in foreign countries as he shall judge necessary.

1909

SEC. 25. That the importation of neat cattle and the hides of neat cattle from any foreign country into the United States is prohibited: *Provided*, That the operation of this section shall be suspended as to any foreign country or countries, or any parts of such country or countries, whenever the Secretary of the Treasury shall officially determine, and give public notice thereof that such importation will not tend to the introduction or spread of contagious or infectious diseases among the cattle of the United States; and the Secretary of the Treasury is hereby authorized and empowered, and it shall be his duty, to make all necessary orders and regulations to carry this section into effect, or to suspend the same as herein provided, and to send copies thereof to the proper officers in the United States, and to such officers or agents of the United States in foreign countries as he shall judge necessary.

1897

SEC. 17. That the importation of neat cattle and the hides of neat cattle from any foreign country into the United States is prohibited: *Provided*, That the operation of this section shall be suspended as to any foreign country or countries, or any parts of such country or countries, whenever the Secretary of the Treasury shall officially determine, and give public notice thereof that such importation will not tend to the introduction or spread of contagious or infectious diseases among the cattle of the United States; and the Secretary of the Treasury is hereby authorized and empowered, and it shall be his duty, to make all necessary orders and regulations to carry this section into effect, or to suspend the same as herein provided, and to send copies thereof to the proper officers in the United States, and to such officers or agents of the United States in foreign countries as he shall judge necessary.

1894

SEC. 20. That the importation of neat cattle and the hides of neat cattle from any foreign country into the United States is prohibited: *Provided*, That the operation of this section shall be suspended as to any foreign country or countries, or any parts of such country or countries, whenever the Secretary of the Treasury shall officially determine, and give public notice thereof that such importation will not tend to the introduction or spread of contagious or infectious diseases among the cattle of the United States; and the Secretary of the Treasury is hereby authorized and empowered, and it shall be his duty, to make all necessary orders and regulations to carry this section into effect, or to suspend the same as therein provided, and to send copies thereof to the proper officers in the United States, and to such officers or agents of the United States in foreign countries as he shall judge necessary.

1890

SEC. 2494. The importation of neat cattle and the hides of neat cattle from any foreign country into the United States is prohibited: *Provided*, That the operation of this section shall be suspended as to any foreign country or countries, or any parts of such country or countries, whenever the Secretary of the Treasury shall officially determine, and give public notice thereof, that such importation will not tend to the introduction or spread of contagious or infectious diseases among the cattle of the United States; and the Secretary of the Treasury is hereby authorized and empowered, and it shall be his duty, to make all necessary orders and regulations to carry this law into effect, or to suspend the same as therein provided, and to send copies thereof to the proper officers in the United States, and to such officers or agents of the United States in foreign countries as he shall judge necessary.

1883

DECISIONS UNDER THE ACT OF 1913.

Disinfection of Hides.—T. D. 30583 (Circular 23) of May 2, 1910, amended so as to permit the shipment of hides without disinfection under certain conditions, the disinfection to be made after the arrival of the hides in the United States.—Dept. Order (T. D. 36332).

Buffalo Hides should be disinfected the same as hides of neat cattle.—Dept. Order (T. D. 31981).

Neat Cattle From New Zealand.—The prohibition in subsection 1, paragraph H, section 4, tariff act of October 3, 1913, suspended as to neat cattle

from New Zealand. T. D. 23546 of February 27, 1902, amended accordingly.—Dept. Order (T. D. 34765).

DECISIONS UNDER THE ACT OF 1897.

Animals—Disinfection.—Regulations of the Treasury Department and Department of Agriculture regarding importation of animals and disinfection of hides of neat cattle applicable to Hawaii.—Dept. Order (T. D. 23546).

1913 H. Subsection 2. That any person convicted of a willful violation of any of the provisions of the preceding subsection shall be fined not exceeding \$500, or imprisoned not exceeding one year, or both, in the discretion of the court.

1909 SEC. 13. That any person convicted of a willful violation of any of the provisions of the preceding section shall be fined not exceeding \$500, or imprisoned not exceeding one year, or both, in the discretion of the court.

1897 SEC. 26. That any person convicted of a willful violation of any of the provisions of the preceding section shall be fined not exceeding \$500, or imprisoned not exceeding one year, or both, in the discretion of the court.

1894 SEC. 18. That any person convicted of a willful violation of any of the provisions of the preceding section shall be fined not exceeding \$500, or imprisoned not exceeding one year, or both, in the discretion of the court.

1890 SEC. 21. That any person convicted of a willful violation of any of the provisions of the preceding section shall be fined not exceeding \$500, or imprisoned not exceeding one year, or both, in the discretion of the court.

1883 SEC. 2495. Any person convicted of a willful violation of any of the provisions of the preceding section shall be fined not exceeding \$500, or imprisoned not exceeding one year, or both, in the discretion of the court.

1913 I. That all goods, wares, articles, and merchandise manufactured wholly or in part in any foreign country by convict labor shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.

1909 SEC. 14. That all goods, wares, articles, and merchandise manufactured wholly or in part in any foreign country by convict labor shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.

1897 SEC. 31. That all goods, wares, articles, and merchandise manufactured wholly or in part in any foreign country by convict labor shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.

1894 SEC. 24. That all goods, wares, articles, and merchandise manufactured wholly or in part in any foreign country by convict labor shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized to prescribe such regulations as may be necessary for the enforcement of this provision.

1890 SEC. 51. That all goods, wares, articles, and merchandise manufactured wholly or in part in any foreign country by convict labor shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized to prescribe such regulations as may be necessary for the enforcement of this provision.

1883 (No corresponding provision.)

DECISION UNDER THE ACT OF 1913.

Entry of Alleged Convict-Labor Goods.—Before excluding merchandise alleged to be the product of convict labor, all evidence relating to any particular entry to be forwarded to the department for consideration. Ruling by the department on paragraph I.—Dept. Order (T. D. 33889).

DECISION UNDER THE ACT OF 1909.

Prison-Made Goods from Philippines.—The Attorney General expresses the opinion that section 14, tariff act of 1909, does not apply to goods made in the Philippine Islands.—Dept. Order (T. D. 31071).

DECISION UNDER THE ACT OF 1897.

Entry Denied of Convict-Labor Goods.—Entry of imported goods, product of convict labor, denied. Compulsory exportation required, or proceedings for condemnation and destruction.—Dept. Order (T. D. 22310).

DECISIONS UNDER THE ACT OF 1890.

Disposition of Prison-Made Goods.—Articles prohibited importation under section 51 may be immediately exported without payment of duty, or if this course is not adopted the goods shall be held under seizure and condemnation proceedings instituted for their condemnation and destruction according to law.—Dept. Orders (T. D.'s 11934 and 23462).

J. Subsection 1: That a discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States, or which being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country; but this discriminating duty shall not apply to goods, wares, or merchandise which shall be imported in vessels not of the United States entitled at the time of such importation by treaty or convention or Act of Congress to be entered in the ports of the United States on payment of the same duties as shall then be payable on goods, wares, and merchandise imported in vessels of the United States, nor to such foreign products or manufactures as shall be imported from such contiguous countries in the usual course of strictly retail trade.

1913 **Sec. 15.** That a discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States, or which being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country; but this discriminating duty shall not apply to goods, wares, or merchandise which shall be imported in vessels not of the United States entitled at the time of such importation by treaty or convention or Act of Congress to be entered in the ports of the United States on payment of the same duties as shall then be payable on goods, wares, and merchandise imported in vessels of the United States, nor to such foreign products or manufactures as shall be imported from such contiguous countries in the usual course of strictly retail trade.

1909 **Sec. 22.** That a discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States, or which being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country; but this discriminating duty shall not apply to goods, wares, or merchandise which shall be imported in vessels not of the United States, entitled at the time of

such importation by treaty or convention to be entered in the ports of the United States on payment of the same duties as shall then be payable on goods, wares, and merchandise imported in vessels of the United States, nor to such foreign products or manufactures as shall be imported from such contiguous countries in the usual course of strictly retail trade.

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1894 SEC. 14. That a discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States; but this discriminating duty shall not apply to goods, wares, and merchandise which shall be imported in vessels not of the United States, entitled, by treaty or any Act of Congress, to be entered in the ports of the United States on payment of the same duties as shall then be paid on goods, wares, and merchandise imported in vessels of the United States.

1890 SEC. 17. That a discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States; but this discriminating duty shall not apply to goods, wares, and merchandise which shall be imported in vessels not of the United States, entitled, by treaty or any Act of Congress, to be entered in the ports of the United States on payment of the same duties as shall then be paid on goods, wares, and merchandise imported in vessels of the United States.

1883 SEC. 2501. A discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States; but this discriminating duty shall not apply to goods, wares, and merchandise which shall be imported in vessels not of the United States, entitled, by treaty or any Act of Congress, to be entered in the ports of the United States on payment of the same duties as shall then be paid on goods, wares, and merchandise imported in vessels of the United States.

Repeal of Certain Provisions of Subsections 1 and 2, Paragraph J, Section 4, Tariff Act of October 3, 1913.

AN ACT To repeal penalties on foreign-built vessels owned by Americans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of sections forty-two hundred and nineteen and forty-two hundred and twenty-five of the Revised Statutes as imposes tonnage duties of 50 cents per ton and light money of 50 cents per ton on a vessel owned by citizens of the United States but not a vessel of the United States; so much of section four J, subsection one, of the Act of October third, nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," as imposes a discriminating duty of 10 per centum ad valorem on all goods, wares, or merchandise imported in a vessel owned by citizens of the United States but not a vessel of the United States; and so much of section four J, subsection two, of the Act aforesaid as provides for the forfeiture of any vessel owned by citizens of the United States but not a vessel of the United States, together with her cargo, tackle, apparel, and furniture, are hereby repealed. Any such tonnage duties, light money, or discriminating duties collected since the passage of the Act of August eighteenth, nineteen hundred and fourteen, shall be refunded, and any such forfeitures incurred are hereby remitted: *Provided, however,* That the provisions of this Act shall apply only in case that any vessel of the character above described after entering an American port shall, before leaving the same, be registered as a vessel of the United States.

SEC. 2. That this Act shall take effect immediately.

Approved, March 4, 1915.—Dept. Order (T. D. 35206).

DECISIONS UNDER THE ACT OF 1897.

Thorium Oxide Manufactured in Canada.—Merchandise shipped from a foreign port into Canada, and remanufactured in Canada into a different commercial article, and imported in its last form, is not subject to the discriminating duty, irrespective of the nationality of the importing vessel.—T. D. 20131 (G. A. 4285).

Discriminating Duty Under Section 22 of the Act of July 24, 1897.—Section 22 of the tariff act of July 24, 1897, providing for a discriminating duty on goods imported in vessels not of the United States, and not specially exempted from such duty by treaty or convention, is one of numerous provisions of a similar character which have appeared in the legislation of the United States for more than a century. Although the paramount purpose of such legislation was to foster American commerce, yet an easy evasion of it was possible by first transporting goods into Canada or Mexico, and thence by rail to the United States. Accordingly, *Held*, that the discriminating duty imposed by said section 22 applies only to (1) goods produced in countries not contiguous to the United States, and directly imported into the United States in vessels not of the United States, and not exempt from such duty by the provisions of section 4228 of the Revised Statutes, or by treaty; or (2) goods produced in noncontiguous countries, and indirectly imported in foreign vessels (not exempted as aforesaid) by being first landed in Canada or Mexico, and then imported into the United States by rail, for the purpose of evading such duty.

Said section 22 omits from its provisions the words "or any act of Congress," which had appeared in earlier enactments, but on the day the President approved said tariff act of 1897 he also approved an act amending said section 4228, Revised Statutes. Accordingly, *Held*, that section 4228 is not repealed by section 22, except to the extent of necessary repugnance, but is in the nature of a proviso to it.

A circular letter issued to collectors by the Secretary of the Treasury, admitting British vessels and cargoes into our ports on the same terms as to duties and imposts as American vessels, having been acquiesced in for nearly 50 years, must be regarded as tantamount to an Executive proclamation under the provisions of section 4228 of the Revised Statutes. See also opinion of the Attorney General promulgated in T. D. 18427 and T. D. 18431.—T. D. 18915 (G. A. 4072).

DECISIONS UNDER THE ACT OF 1894.

Mexican Vessels.—Merchandise imported in Mexican vessels has not been relieved from the discriminating duty.—T. D. 16571 (G. A. 3267).

DECISIONS UNDER SECTION 3095, REVISED STATUTES.

Mexico—Importations from.—The exceptions specified in R. S. 3095 do not apply to Brazos de Santiago nor the district in which it is situated, and which runs up the Rio Grande on the boundary line between the United States and Mexico and adjacent to Mexico, and the prohibition of the statute applies to all such vessels arriving by sea at the port of Brazos de Santiago from any foreign port, including the port of Tampico, Mexico. The said section must be read in connection with R. S. 3097.—U. S. v. The Sloop *Theophile*, 11 Fed. Rep., 696.

Discriminating Duty—Goods From Beyond the Cape of Good Hope.

[Under act of Aug. 5, 1861 (12 Stat., 292), sec. 3.]

The 10 per cent ad valorem duty imposed by this section is imposed only as an additional duty to duties imposed by this act and can not be imposed on

goods not charged with a duty by this act.—*Echeverria v. Barney*, 5 Blatchf., 193; 8 Fed. Cas., 283.

[Under act of July 14, 1862 (12 Stat., 543), sec. 14.]

Under section 14 of this act, rice the growth of a country beyond the Cape of Good Hope, imported into England in an unclean state, and there cleaned, and thence imported into the United States, is liable to a duty of 10 per cent in addition to the duty imposed by section 8 on cleaned rice, when imported directly from the country of its growth.—*Williams v. Barney*, 5 Blatchf., 219; 29 Fed. Cas., 1355.

The cleaning of the rice in England does not change its identity as rice or cause it to cease to be the growth or production of a country beyond the Cape of Good Hope.—*Id.*

"Silk in the gum not more advanced in manufacture than tram and thrown organzine," when so advanced in England from "silk, raw, or as reeled from the cocoon, not being doubled, twisted, or advanced in manufacture in any way," which has been produced in a country beyond the Cape of Good Hope and thence imported into England, or when so advanced in England from "silk, raw, or as reeled from the cocoon," etc., which has been produced in a country this side of that cape and thence imported into England, is, on being imported from England, liable to a discriminating duty of 10 per cent in addition to the duty imposed by section 2, act of August 5, 1861.—*Strange v. Barney*, 35 Fed. Rep., 196.

The advancing in England to tram, thrown, and organzine of "silk, raw, or as reeled from the cocoon, not being doubled," which has been produced in another country, does not cause it to cease to be the produce of such other country.—*Id.*

[Under act of June 30, 1864 (13 Stat., 202), sec. 18.]

The act of June 6, 1872 (17 Stat., 230), placing certain articles on the free list, did not have the effect to repeal this section, and goods imported as in this section, although on such free list, are subject to the discriminating duty of 10 per cent.—*Gautier v. Arthur*, 13 Blatchf., 432; 22 Int. Rev. Rec., 256; 10 Fed. Cas., 104; overruled in 104 U. S., 345.

Plumbago and citronella, the produce of a country east of the Cape of Good Hope, imported from British possessions west of the Cape of Good Hope, are subject to the discriminating duty of 10 per cent.—*Id.*; overruled in 104 U. S., 345.

[Under act of Mar. 3, 1865 (13 Stat., 491), sec. 6.]

The additional duty is chargeable, though the same goods be free from duty when imported from the place of their production east.—*Sturges v. The Collector*, 12 Wall., 19.

Section 21, act of July 14, 1870 (16 Stat., 262), did not repeal, as to such articles, this section.—*Russell v. Williams*, 106 U. S., 623.

This provision is a general commercial regulation, made to encourage direct importations from countries east of the Cape of Good Hope, as well as to benefit American shipping, and is applicable without regard to the regular duties imposed for purposes of revenue, and even where the articles are entirely free from duty.—*Id.*

[Under act of June 6, 1872 (17 Stat., 230), sec. 3.]

Opium, the product of Persia, imported to the United States from a country west of the Cape of Good Hope, is subject to the additional duty imposed by this section.—*Powers v. Comly*, 101 U. S., 789.

[Under act of Aug. 30, 1842, sec. 11.]

The discriminating duty imposed by this section is not abolished by the act of June 30, 1846.—*Stalker v. Maxwell*, 3 Blatchf., 138; 22 Fed. Cas., 1041.

Such discriminating duty continues even though the general tariff of duties be altered.—*Id.*

Calcutta, in the British East Indies, is a country beyond the Cape of Good Hope.—*Campbell v. Barney*, 5 Blatchf., 221; 4 Fed. Cas., 1157.

The latter clause of this section "and in addition," etc., does not qualify the general language of the first clause "on all goods" so as to exclude from it the articles previously exempt. It only provides that the duty laid by the first clause shall be in addition to the existing duties imposed on such articles when imported directly from the places of their growth or production; in other words, that such articles as already pay a duty when imported directly from these places shall pay a further duty when imported from places this side of the cape; its object being to increase the duty upon the articles when not imported directly from their places of growth or production. The words "any such articles" do not mean all articles embraced in the first clause, but only such of them as were already subject to duty.—*Hadden v. The Collector*, 5 Wall., 107.

The section in question does not make a discrimination in favor of the ports of the Pacific, and thus contravene that clause of the Constitution which requires that "all duties, imposts, and excises shall be uniform throughout the United States." The terms "beyond the Cape of Good Hope" are employed as descriptive of the locality of certain countries, not their relative position with respect to ports of import. They indicate the locality of certain countries with reference to the position of the lawmakers at the National Capital.—*Id.*

1913 J. Subsection 2. That no goods, wares, or merchandise, unless in cases provided for by treaty, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture, or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation. All goods, wares, or merchandise imported contrary to this section, and the vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship, or vessel, and cargo shall be liable to be seized, prosecuted, and condemned in like manner, and under the same regulations, restrictions, and provisions as have been heretofore established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws.

1909 SEC. 16. That no goods, wares, or merchandise, unless in cases provided for by treaty, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production or manufacture, or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation. All goods, wares, or merchandise imported contrary to this section, and the vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship, or vessel, and cargo shall be liable to be seized, prosecuted, and condemned in like manner, and under the same regulations, restrictions, and provisions as have been heretofore established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws.

SEC. 23. That no goods, wares, or merchandise, unless in cases provided for by treaty, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture, or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation. All goods, wares, or merchandise imported contrary to this section, and the vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship, or vessel, and cargo shall be liable to be seized, prosecuted, and condemned in like manner, and under the same regulations, restrictions, and provisions as have been heretofore established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws.

1897

SEC. 15. That no goods, wares, or merchandise, unless in cases provided for by treaty, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture, or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation. All goods, wares, or merchandise imported contrary to this section, and the vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship, or vessel, and cargo shall be liable to be seized, prosecuted, and condemned in like manner, and under the same regulations, restrictions, and provisions as have been heretofore established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws.

1894

SEC. 18. That no goods, wares, or merchandise, unless in cases provided for by treaty, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture, or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation. All goods, wares, or merchandise imported contrary to this section, and the vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship, or vessel, and cargo shall be liable to be seized, prosecuted, and condemned, in like manner, and under the same regulations, restrictions, and provisions as have been heretofore established for the recovery, collection, distribution, and remission of forfeitures to the United States by several revenue laws.

1890

SEC. 2497. No goods, wares, or merchandise, unless in cases provided for by treaty, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture, or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation. All goods, wares, or merchandise imported contrary to this section, and the vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship, or vessel, and cargo shall be liable to be seized, prosecuted, and condemned, in like manner, and under the same regulations, restrictions, and provisions as have been heretofore established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws.

1883

Treaty with Portugal.—The second article of the treaty with Portugal of August 26, 1840 (10 Stat., 560), did not restrict either party from laying dis-
60690°—18—vol 2—22

criminating duties on merchandise not the growth or production of the nation of the vessel carrying the same into the port of the other nation, and the provision in schedule 1 of the act of July 30, 1846 (9 Stat., 49), exempting tea and coffee from duty when imported direct from the place of their growth or production, in American vessels or in foreign vessels entitled by reciprocity treaties to be exempt from discriminating duties, tonnage, and other charges, does not apply to such articles when imported in Portuguese vessels.—*Oldfield v. Marriott*, 10 How., 146.

1913 J. Subsection 3. That the preceding subsection shall not apply to vessels or goods, wares, or merchandise imported in vessels of a foreign nation which does not maintain a similar regulation against vessels of the United States.

1909 SEC. 17. That the preceding section shall not apply to vessels or goods, wares, or merchandise imported in vessels of a foreign nation which does not maintain a similar regulation against vessels of the United States.

1897 SEC. 24. That the preceding section shall not apply to vessels or goods, wares, or merchandise imported in vessels of a foreign nation which does not maintain a similar regulation against vessels of the United States.

1894 SEC. 16. That the preceding section shall not apply to vessels or goods, wares, or merchandise imported in vessels of a foreign nation which does not maintain a similar regulation against vessels of the United States.

1890 SEC. 19. That the preceding section shall not apply to vessels or goods, wares, or merchandise imported in vessels of a foreign nation which does not maintain a similar regulation against vessels of the United States.

1883 SEC. 2498. The preceding section shall not apply to vessels, or goods, wares, or merchandise, imported in vessels of a foreign nation which does not maintain a similar regulation against vessels of the United States.

1913 J. Subsection 4: That machinery or other articles to be altered or repaired, molders' patterns for use in the manufacture of castings intended to be and actually exported within six months from the date of importation thereof, models of women's wearing apparel imported by manufacturers for use as models in their own establishments, and not for sale, samples solely for use in taking orders for merchandise, articles intended solely for experimental purposes, and automobiles, motor cycles, bicycles, aeroplanes, airships, balloons, motor boats, racing shells, teams, and saddle horses, and similar vehicles and craft brought temporarily into the United States by nonresidents for touring purposes or for the purpose of taking part in races or other specific contests, may be admitted without the payment of duty under bond for their exportation within six months from the date of importation and under such regulations and subject to such conditions as the Secretary of the Treasury may prescribe: *Provided*, That no article shall be entitled to entry under this section that is intended for sale or which is imported for sale on approval.

1909 SEC. 18. That machinery for repair may be imported into the United States without payment of duty, under bond, to be given in double the appraised value thereof, to be withdrawn and exported after said machinery shall have been repaired; and the Secretary of the Treasury is authorized and directed to prescribe such rules and regulations as may be necessary to protect the revenue against fraud and secure the identity and character of all such importations when again withdrawn and exported, restricting and limiting the export and withdrawal to the same port of entry where imported, and also limiting all bonds to a period of time of not more than six months from the date of the importation,

1897 SEC. 19. That machinery for repair may be imported into the United States without payment of duty, under bond, to be given in double the appraised value thereof, to be withdrawn and exported after said machinery shall have been repaired; and the Secretary of the Treasury is authorized and directed to prescribe such rules and regulations as may be necessary to protect the revenue against fraud and secure the identity and character of all such importations when again withdrawn and exported, restricting and limiting the export and withdrawal to the same port of entry where imported, and also limiting all bonds to a period of time of not more than six months from the date of the importation.

1894 SEC. 13. That machinery for repair may be imported into the United States without payment of duty, under bond, to be given in double the appraised value thereof, to be withdrawn and exported after said machinery shall have been repaired; and the Secretary of the Treasury is authorized and directed to prescribe such rules and regulations as may be necessary to protect the revenue against fraud and secure the identity and character of all such importations when again withdrawn and exported, restricting and limiting the export and withdrawal to the same port of entry where imported, and also limiting all bonds to a period of time of not more than six months from the date of the importation.

1890 SEC. 14. That machinery for repair may be imported into the United States without payment of duty, under bond, to be given in double the appraised value thereof, to be withdrawn and exported after said machinery shall have been repaired; and the Secretary of the Treasury is authorized and directed to prescribe such rules and regulations as may be necessary to protect the revenue against fraud, and secure the identity and character of all such importations when again withdrawn and exported, restricting and limiting the export and withdrawal to the same port of entry where imported, and also limiting all bonds to a period of time of not more than six months from the date of the importation.

1883 SEC. 2507. Machinery for repair may be imported into the United States without payment of duty, under bond, to be given in double the appraised value thereof, to be withdrawn and exported after said machinery shall have been repaired; and the Secretary of the Treasury is authorized and directed to prescribe such rules and regulations as may be necessary to protect the revenue against fraud and secure the identity and character of all such importations when again withdrawn and exported, restricting and limiting the export and withdrawal to the same port of entry where imported, and also limiting all bonds to a period of time of not more than six months from the date of the importation.

DECISIONS UNDER THE ACT OF 1913.

Diamonds—Repairs.—Unset diamonds and other precious stones imported for repairs entitled, under certain conditions, to admission free of duty under bond, in accordance with subsection 4 of paragraph J of section 4, tariff act of 1913.—Dept. Order (T. D. 35872).

Models of Wearing Apparel.—Duty to be collected on models of wearing apparel entered under bond for exportation when the cords and seals have been removed or tampered with.—Dept. Order (T. D. 34898).

Entry Under Six Months Bond.—Regulations governing entry under bond.—Dept. Orders (T. D. 33806 amended by T. D's 34273 and 34374).

DECISIONS UNDER THE ACT OF 1909.

Samples.—The merchandise consists of fashion plates made of surface-coated paper with samples of embroidered or appliqué dress goods attached for use mainly in mail-order business. These goods are not properly "samples," but are printed matter on surface-coated paper, coming into competition with like commercial articles produced and for sale in this country. They were not,

accordingly, entitled to free entry.—*Gernet v. U. S.* (Ct. Cust. Appls.), T. D. 33834; (G. A. Ab. 31319) T. D. 33194 affirmed.

These samples that show coloring results are designed for the use of salesmen who place dyes on the market; they are not samples of the dyes themselves. The regulations provide that samples to be entitled to free entry must be such as "are obviously intended for use merely as samples of merchandise to sell the class of goods which they represent." These goods were properly assessed as printed matter under paragraph 416, tariff act of 1909.—*Badische Co. v. U. S.* (Ct. Cust. Appls.), T. D. 33535; (G. A. Ab. 31012) T. D. 33055 affirmed.

Samples intended for use in soliciting orders, not intended to be sold or to mingle in the commerce of this country, to be admitted free of duty. T. D. 4828 is hereby modified accordingly.—Dept. Order (T. D. 31771).

Specific Duty.—We find in this case that the articles are lithographic patterns of linoleum printed on paper and bound or inclosed in heavy paper-board covers. The importation was classified as lithographic prints at 20 cents per pound under paragraph 412, tariff act of 1909.

The articles have been levied with duty at a specific rate, and the fact that they are samples would not exempt them from duty based and conditioned on the weight of the goods. Ab. 20629 (T. D. 29559).—Ab. 29757 (T. D. 32823).

British Commercial Travelers' Samples.—T. D. 31136 of December 22, 1910, promulgating the reciprocal agreement with the United Kingdom of Great Britain and Ireland relative to commercial travelers' samples, amended so as to permit the free entry of dutiable samples under certain conditions.—Dept. Order (T. D. 31537).

Samples.—No part of the statute provides that samples are free. Regulations have been promulgated by the Secretary of the Treasury (T. D. 31771 and T. D. 32082) directing that certain samples of whatever value, if used bona fide for samples, are free. We do not think there is any warrant in the statute for such regulation.

These goods, while not invoiced as of any value, certainly had value. They were appraised, apparently, by the appraising officer, and such appraisement was made the basis of liquidation by the collectors. We are of the opinion that this action on the part of the collectors was justified.—Ab. 31637 (T. D. 33263).

A traveling salesman's samples for which consumption entry was made and which were subsequently exported under the supervision of customs officials were claimed to be free of duty. Protest overruled.—Ab. 24900 (T. D. 31335).

Samples of No Commercial Value.—Merchandise returned by the appraiser as samples of no commercial value was claimed to be free of duty.

Under the provisions of subsection 7 of section 28 of the tariff act of 1909 the importers at the time of making entry, but not afterwards, had the right to make such deduction from the cost or value given in the invoice as to lower the same to the actual market value of such merchandise at the time of exportation to the United States in the principal markets of the country from whence imported. This, however, the importers apparently failed to do, and the collector assessed duty on not less than the entered value, in accordance with the provisions of said subsection 7.—Ab. 25110 (T. D. 31429).

DECISIONS UNDER THE ACT OF 1897.

Entry Under Repair Bond.—Strict compliance with the Customs Regulations is a condition precedent to the enjoyment of the rights and privileges given by section 19, tariff act of 1897.—T. D. 27844 (G. A. 6517).

Samples are dutiable when invoiced or appraised or reappraised at a valuation.—T. D. 21327 (G. A. 4467).

DECISIONS UNDER STATUTES PRIOR TO THE ACT OF 1897.

Machinery Imported for Repairs at Port of Island Pond, Vt., and exported from St. Albans. Not free under this section.—T. D. 16651 (G. A. 3296).

Shade Cards—Samples.—Samples having an invoice value are not free. T. D. 10886 (G. A. 381); T. D. 12562 (G. A. 1246); T. D. 12626 (G. A. 1275); T. D. 13677 (G. A. 1915).—T. D. 16426 (G. A. 3215).

Samples—Handkerchiefs and Cuffs.—Hemstitched linen handkerchiefs sewed in paper covers, each cover containing from half a dozen to a dozen handkerchiefs, intended as samples, are not free.—T. D. 13445 (G. A. 1782).

Sample Books made of stiff paper covers, ornamented and lettered, containing blank paper leaves upon which embroidery patterns are fastened, were properly assessed upon the appraised value. The importer should have expressed his dissatisfaction with the appraised value by an appeal for reappraisal.—T. D. 13330 (G. A. 1710).

Samples having a foreign market value and appraised at such value are not free as samples.—T. D. 16476 (G. A. 3229).

The Treasury Department has repeatedly held that samples having no commercial value are not merchandise within the meaning of the tariff acts. (T. D.'s 4828, 9243.) These decisions are invoked by the appellants for the free importation of 4,000 printed blotting pads invoiced at £11 10s., which the protest states are to be "distributed all over the country to advertise exclusively Stephens' ink." There is no principle upon which articles of this sort should be admitted free.—T. D. 10461 (G. A. 111).

J. Subsection 5. That all materials of foreign production which may be necessary for the construction of naval vessels or other vessels of the United States, vessels built in the United States for foreign account and ownership, or for the purpose of being employed in the foreign or domestic trade, and all such materials necessary for the building of their machinery, and all articles necessary for their outfit and equipment, may be imported in bond under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for such purposes no duties shall be paid thereon.

1913

PANAMA CANAL ACT.

SECTION 4132, Revised Statutes, as amended by section 5 of the Panama Canal Act, approved August 24, 1912, provides:

That all materials of foreign production which may be necessary for the construction or repair of vessels built in the United States and all such materials necessary for the building or repair of their machinery and all articles necessary for their outfit and equipment may be imported into the United States free of duty under such regulations as the Secretary of the Treasury may prescribe.

SEC. 19. That all materials of foreign production which may be necessary for the construction of vessels built in the United States for foreign account and ownership, or for the purpose of being employed in the foreign trade, including the trade between the Atlantic and Pacific ports of the United States, and all such materials necessary for the building of their machinery, and all articles necessary for their outfit and equipment, may be imported in bond under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for such purposes no duties shall be paid thereon. But vessels receiving the benefit of this section shall not be allowed to engage in the coastwise trade of the United States more than six months in any one year except upon the payment to the United States of the duties of which a rebate is herein allowed: *Provided*, That vessels built in the United States for foreign account and ownership shall not be allowed to engage in the coastwise trade of the United States.

1909

1897 SEC. 12. That all materials of foreign production which may be necessary for the construction of vessels built in the United States for foreign account and ownership, or for the purpose of being employed in the foreign trade, including the trade between the Atlantic and Pacific ports of the United States, and all such materials necessary for the building of their machinery, and all articles necessary for their outfit and equipment, may be imported in bond under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for such purposes no duties shall be paid thereon. But vessels receiving the benefit of this section shall not be allowed to engage in the coastwise trade of the United States more than two months in any one year except upon the payment to the United States of the duties of which a rebate is herein allowed: *Provided*, That vessels built in the United States for foreign account and ownership shall not be allowed to engage in the coastwise trade of the United States.

1894 SEC. 7. That all materials of foreign production which may be necessary for the construction of vessels built in the United States for foreign account and ownership or for the purpose of being employed in the foreign trade, including the trade between the Atlantic and Pacific ports of the United States, and all such materials necessary for the building of their machinery, and all articles necessary for their outfit and equipment, after the passage of this Act, may be imported in bond under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for such purposes no duties shall be paid thereon. But vessels receiving the benefit of this section shall not be allowed to engage in the coastwise trade of the United States more than two months in any one year except upon the payment to the United States of the duties of which a rebate is herein allowed: *Provided*, That vessels built in the United States for foreign account and ownership shall not be allowed to engage in the coastwise trade of the United States.

1890 SEC. 8. That all lumber; timber, hemp, manila, wire rope, and iron and steel rods, bars, spikes, nails, plates, tees, angles, beams and bolts and copper and composition metal which may be necessary for the construction and equipment of vessels built in the United States for foreign account and ownership or for the purpose of being employed in the foreign trade, including the trade between the Atlantic and Pacific ports of the United States, after the passage of this Act, may be imported in bond, under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for such purpose no duties shall be paid thereon. But vessel receiving the benefit of this section shall not be allowed to engage in the coastwise trade of the United States more than two months in any one year, except upon the payment to the United States of the duties on which a rebate is herein allowed: *Provided*, That vessels built in the United States for foreign account and ownership shall not be allowed to engage in the coastwise trade of the United States.

1883 SEC. 2510. All lumber, timber, hemp, manila, wire rope, and iron and steel rods, bars, spikes, nails, and bolts, and copper and composition metal which may be necessary for the construction and equipment of vessels built in the United States for foreign account and ownership or for the purpose of being employed in the foreign trade, including the trade between the Atlantic and Pacific ports of the United States, after the passage of this Act, may be imported in bond, under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for such purpose no duties shall be paid thereon. But vessels receiving the benefit of this section shall not be allowed to engage in the coastwise trade of the United States more than two months in any one year, except upon the payment to the United States of the duties on which a rebate is herein allowed: *Provided*, That vessels built in the United States for foreign account and ownership shall not be allowed to engage in the coastwise trade of the United States.

DECISIONS UNDER THE ACT OF 1913.

Material for Construction of Vessels.—Regulations governing the entry of materials for construction and repair of vessels.—Dept. Order (T. D. 34150) amended by T. D. 35700.

Hydroaeroplanes as Vessels, etc.—Free Entry of Equipment.—Hydroaeroplanes held to be "vessels" within the meaning of subsections 5 and 6 of paragraph J of section 4, and compasses for hydroaeroplanes to be articles of outfit and equipment, and entitled to free entry as such, subject to compliance with the regulations in T. D. 34150. Aeroplanes other than hydroaeroplanes are not such "vessels."—Dept. Order (T. D. 36156).

Vessels—Motor Engines For.—Motor engines for the propulsion of vessels are not entitled to free entry under subsection 5, paragraph J, section 4, tariff act of 1913, when intended for vessels under construction, but may be withdrawn free of duty under subsection 6, *ibid.*, when for the repair of vessels already built.—Dept. Order (T. D. 35740).

Steam Trawls were held properly classified as manufactures of vegetable fiber under paragraph 284, tariff act of 1913, rather than entitled to free entry under subsections 5 and 6, paragraph J, section 4. *U. S. v. Sickel* (6 Ct. Cust. Appls., —; T. D. 35394) and T. D. 34150 cited.—Ab. 38222.

DECISIONS UNDER THE ACT OF AUG. 24, 1912.

Outfit and Equipment for Vessels.—Tools and appliances used during the installation of the electrical equipment aboard a battleship were claimed entitled to free entry under section 3 of the Panama Canal act (T. D. 32956). Protest overruled.—Ab. 37076 (T. D. 35000).

Lead may be withdrawn from bonded smelting warehouses free of duty for use in the construction or repair of vessels or their machinery under T. D. 32956.—Dept. Order (T. D. 33095).

Unreasonable Treasury Regulation Invalid.—Following *U. S. v. John A. Conkey & Co.* (6 Ct. Cust. Appls.), T. D. 36122, the Treasury Department's regulation of November 25, 1912, issued under section 5, Panama Canal act, prescribing, as a prerequisite for admission free under said section, an exclusive method of proof that the importations conform to the description in the section is unreasonable in that it requires the importer to produce the affidavit of persons over whom he has no control, and is, therefore, invalid.

The fact that this regulation is invalid does not relieve the importer of the burden of proving that the importations conform to the description in the section.—*U. S. v. John A. Conkey & Co.* (Ct. Cust. Appls.), T. D. 36123; *G. A. Ab. 37280* reversed.

The Treasury Department's regulation of November 25, 1912, issued under section 5, Panama Canal act, prescribing, as a prerequisite for admission free under said section, an exclusive method of proof that the importations conform to the description in the section, is unreasonable in that it requires the importer to produce the affidavit of persons over whom he has no control, and is, therefore, invalid.

Other evidence was properly admitted.—*U. S. v. John A. Conkey & Co.* (Ct. Cust. Appls.), T. D. 36122; (*G. A. 7668*) T. D. 35086 affirmed.

Treasury Regulations.

FREE ENTRY.—Merchandise which may be necessary for the construction or repair of vessels built in the United States or for the building or repair of their machinery, or articles necessary for their outfit and equipment may be

imported into the United States free of duty under such regulations as the Secretary of the Treasury may prescribe. Section 4132, Revised Statutes, amended by section 5, act of August 24, 1912.

COMPLIANCE WITH REGULATIONS.—Compliance with regulations made by the Secretary of the Treasury for the administration of section 5 of the act of August 24, 1912, pursuant to the express authority granted thereby, is a condition precedent to the right of free entry thereunder: *Provided*, That these regulations are reasonable and do not in their operation defeat the purpose of the law. *U. S. v. Dominici et al.* (78 Fed., 334); *E. H. Sargent Co., G. A. 5532* (T. D. 24902).

UNREASONABLE REGULATIONS.—Subdivisions (a) and (b) of section 10 of the regulations promulgated November 25, 1912, for the administration of section 5 of the act of August 24, 1912, render inoperative the act and destroy the right of free entry given thereby, and hence are unreasonable. *U. S. v. Morris European & American Express Co.* (3 Ct. Cust. Appls., 146; T. D. 32386); *U. S. v. Dominici et al.* (78 Fed., 334); *Morrill v. Jones* (106 U. S., 466); *E. L. Goodsell Co., G. A. 3880* (T. D. 18078).

ORAL TESTIMONY WHERE REGULATIONS ARE INOPERATIVE.—Where the regulations of the Secretary of the Treasury are inoperative or unreasonable, the Board of General Appraisers will receive oral testimony to establish the facts essential to free entry and which were sought to be elicited by such regulations.—T. D. 35086 (G. A. 7668).

Abstract of Decisions.—Various published and unpublished decisions compiled.—Dept. Order (T. D. 33386).

DECISIONS UNDER THE ACT OF 1897.

Ship's Materials.

MATERIALS FOR SHIP IN FOREIGN TRADE.—Materials admitted to free entry under section 7 or 12, tariff act of 1894 or 1897, respectively, for use in the construction or equipment of a vessel employed in the foreign trade, do not become dutiable when such vessel makes a coastwise voyage of more than two months' duration after the materials exempted had become worn out, or had ceased to be serviceable or useful for the purpose for which they were used.

WORN-OUT METAL SHEATHING.—Where it is shown that the life of imported metal sheathing on a vessel, and its effectiveness, does not continue longer than from two and one-half to three years, duties will not accrue on such sheathing which has been in use for more than four years at the time the vessel undertakes a coastwise voyage, notwithstanding the owner has allowed it to remain on the vessel. *In re Spreckels & Bros. Co.*, 104 Fed. Rep., 879 (reversing *In re Spreckels & Bros. Co.*, G. A. 3694), *infra*, followed.—T. D. 22986 (G. A. 4914).

DECISIONS UNDER THE ACT OF 1890.

The Treasury Department in its construction of section 8, act of 1890, and R. S. 2513, of which it is virtually a reenactment, having customarily allowed the cancellation of the duty charged against a vessel whenever it was made to appear that the article against which it was charged had become unserviceable, a shipowner, under such rulings, should be allowed a cancellation of the duty on metal sheathing used on the wooden hull of his vessel, on his application therefor, in contemplation of coastwise voyage, when such sheathing has been in constant use for more than four years, and when it is shown that the life of such metal sheathing and its effectiveness does not continue longer than from two and one-half to three years, notwithstanding he has allowed it to remain on the vessel and accepted the consequent lower rating. Reversing the board.—*In re Spreckels & Bros. Co. (C. C.)*, 104 Fed. Rep., 879.

"Lighthouses."—So-called "lighthouses" to be used in the construction and equipment of the ship *Shenandoah*, being built by Sewell & Co., held not to be free under section 8, act of 1890.—T. D. 10662 (G. A. 246).

DECISIONS UNDER STATUTES PRIOR TO 1883.

Materials for Vessel in Trade Between Atlantic and Pacific Ports of United States.—The term "foreign trade," as used in section 10, act of June 6, 1872 (17 Stat., 230), includes trade between the Atlantic and Pacific ports of the United States.

The term "coastwise trade," as used in this section, does not include trade between the Atlantic and Pacific ports of the United States.

An American vessel previously engaged exclusively in the foreign trade was repaired at Boston and thence sailed in ballast, via New York, for San Francisco for a cargo for Europe, and thereafter was engaged exclusively in foreign trade. In an action by the United States to recover duties on articles of foreign production withdrawn from the bonded warehouse in Boston under section 10, act of June 6, 1872, and used in repairing, held that the vessel was engaged exclusively in foreign trade and had not, by the voyage to San Francisco, engaged in the coastwise trade within the meaning of those terms as used in said section, and that the articles withdrawn from bond and used in repairing were exempt from duty.—U. S. v. Patten (Holmes, 421), 27 Fed. Cas., 460.

Material for Foreign Vessel Plying Between Japanese Ports.—Section 10, act of June 6, 1872, does not apply to materials used in the construction of a merchant vessel built in the United States for the Japanese Government and employed by it for service between Japanese ports and not documented as an American vessel. Such materials are not free.—Russell v. U. S., 15 Blatchf., 26; 21 Fed. Cas., 65.

J. Subsection 6. That all articles of foreign production needed for the repair of naval vessels of, or other vessels owned or used by, the United States and vessels now or hereafter registered under the laws of the United States may be withdrawn from bonded warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe:

1913 SEC. 20. That all articles of foreign production needed for the repair of American vessels engaged in foreign trade, including the trade between the Atlantic and Pacific ports of the United States, may be withdrawn from bonded warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe.

1909 SEC. 13. That all articles of foreign production needed for the repair of American vessels engaged in foreign trade, including the trade between the Atlantic and Pacific ports of the United States, may be withdrawn from bonded warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe.

1897 SEC. 8. That all articles of foreign production needed for the repair of American vessels engaged in foreign trade, including the trade between the Atlantic and Pacific ports of the United States, may be withdrawn from bonded warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe.

1894 SEC. 9. That all articles of foreign production needed for the repair of American vessels engaged in foreign trade, including the trade between the Atlantic and Pacific ports of the United States, may be withdrawn from bonded warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe.

1890 SEC. 2511. All articles of foreign production needed for the repair of American vessels engaged exclusively in foreign trade may be withdrawn from bonded warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe.

1883

DECISION UNDER THE ACT OF 1913.

Wireless Apparatus.—In view of the act of July 23, 1912 (37 Stat., 199) amendatory of the act of June 24, 1910, compelling ships of a certain class to be equipped with wireless apparatus of a certain class, such apparatus imported to replace inefficient apparatus upon such American ships is admissible free of duty as repairs for American vessels under subsection 6 of paragraph J of section 4, tariff act of 1913, and not dutiable as being in chief value of metal under paragraph 167.—U. S. v. Kennedy & Moon (Ct. Cust. Appls.), T. D. 37010.

J. Subsection 7. That a discount of 5 per centum on all duties imposed by this Act shall be allowed on such goods, wares, and merchandise as shall be imported in vessels admitted to registration under the laws of the United States: *Provided*, That nothing in this subsection shall be so construed as to abrogate or in any manner impair or affect the provisions of any treaty concluded between the United States and any foreign nation.

1909 (No corresponding provision.)

1897 (No corresponding provision.)

1894 (No corresponding provision.)

1890 (No corresponding provision.)

1883 (No corresponding provision.)

DECISION UNDER THE ACT OF 1913.

Five Per Cent Discount Cases.—Section 4, paragraph J, subsection 7, of the tariff act of October 3, 1913 (c. 16, 38 Stat., 114, 196), after declaring that a discount of 5 per cent on all duties imposed by the act shall be allowed on such goods as shall be imported in vessels admitted to registration under the laws of the United States, adds, by way of proviso, "that nothing in this subsection shall be so construed as to abrogate or in any manner impair or affect the provisions of any treaty concluded between the United States and any foreign nation." *Held* that the grant of the discount is confined to goods in American bottoms, and the effect of the proviso is to respect the treaty privileges with which such a grant would be in conflict, not by extending the grant to goods borne in foreign vessels, but by suspending the grant entirely while such privileges exist.—(6 Cust. Appls. Rep., 291) T. D. 35508 reversed.—U. S. v. M. H. Pulaski Co. et al. (37 U. S. Sup. Ct. Rep., 346) T. D. 37104.

Collectors instructed to make no allowance of discounts under subsection 7 of paragraph J of section 4 of the tariff act.—Dept. Orders (T. D. 33782 and 33847).

Goods in warehouse at the time the act of 1913 became effective are not entitled to the 5 per cent discount.—T. D. 34242 (G. A. 7540).

K. The privilege of purchasing supplies from public warehouses, free of duty, and from bonded manufacturing warehouses, free of duty or of internal-revenue tax, as the case may be, shall be extended, under such regulations as the Secretary of the Treasury shall prescribe, to the vessels of war of any nation in ports of the United States which may reciprocate such privileges toward the vessels of war of the United States in its ports.

1913 { SEC. 21. That section twenty-nine hundred and eighty-two of the Revised Statutes of the United States be, and the same here is, amended to read as follows:
"Sec. 2982. The privilege of purchasing supplies from public warehouses, free of duty, and from bonded manufacturing warehouses, free of duty or of internal-revenue tax, as the case may be, shall be extended, under such regulations as the Secretary of the Treasury shall prescribe, to the vessels of war of any nation in ports of the United States which may reciprocate such privileges toward the vessels of war of the United States in its ports."

1909

1913 L. That whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years, and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe.

1909 SEC. 22. That whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years, and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe.

1897 SEC. 28. That whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years, and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe.

1894 SEC. 20. That whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years, and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe.

1890 SEC. 23. That whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years, and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, and without being obliged to enter the same at the customhouse; but under such regulations as the Secretary of the Treasury may prescribe.

1883 SEC. 2504. That whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years, and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, and without being obliged to enter the same at the customhouse; but under such regulations as the Secretary of the Treasury may prescribe.

R. S. SEC. 2928. Before any merchandise which may be taken from any wreck shall be admitted to an entry, the same shall be appraised; and the same proceedings shall be ordered and executed in all cases where a reduction of duty shall be claimed on account of damage which any merchandise shall have sustained in the course of the voyage; and in all cases where the owner, importer, consignee, or agent shall be dissatisfied with such appraisement he shall be entitled to the privileges of appeal as provided for in this title.

DECISIONS UNDER THE ACT OF 1897.

Derelict Merchandise.—Where a vessel loses part of her cargo in American waters, on the voyage of importation, duty must be assessed only on the actual quantity imported in the vessel. The portion lost overboard, if subsequently recovered in any American collection district, must be retained in customs custody until due entry or sale as unclaimed.—Dept. Order (T. D. 23155).

DECISIONS UNDER THE ACT OF 1890.

Free Entry of Wrecked Goods from Vessel Two Years Sunk and Abandoned.—It being understood from reference to section 2507, Revised Statutes, that said vessel has been for two years sunk in the waters of the United States and abandoned by her owners, allow the landing, without entry and free of duty, of any goods which may be recovered at Port Angeles, which is the nearest port to the wreck.

Notice that said section 2507 is reproduced in the act of March 3, 1883, as section 2504, and is referred to by the latter number in article 428 of the General Regulations of 1884.—Dept. Order (T. D. 11498).

DECISIONS UNDER R. S. 2928.

Entry by Appraisement of Wrecked Goods.—Application has been made on behalf of the importing underwriters to enter by appraisement, under section 2928 of the Revised Statutes, certain merchandise taken from the wrecked steamer *Paris*, cast away on the Manacles off the south coast of England. The *Paris* was en route and laden for the port of New York when cast away. The cargo was lightered from the wreck to the nearest available vessel of the same line, thus completing the interrupted voyage.

Permit the entry of such merchandise under said section by appraisement.—Dept. Order (T. D. 21434).

Goods Damaged by Sinking of Lighter.—Twenty-five packages of earthenware, imported in the steamer *California* from Hamburg, and sunk while on board the lighter *Henriett* carrying the same to the vessel of importation. The department is of the opinion that the voyage of importation of the said packages of earthenware commenced at the time of the sailing of the lighter, and that, therefore, the importers are entitled to have the same appraised and to make entry under section 2928, Revised Statutes.—Dept. Order (T. D. 12061).

Derelict Goods, a certain hogshead of rum which was claimed to have been picked up at sea derelict, about 40 miles off the coast of Florida, by Capt. Latham, of the schooner *Melinda Wood*, of Noauk, Conn.

All derelict or wrecked goods should be entered by appraisement. (R. S. 2928.)

Should no other claimant appear, the salvor may make entry accordingly, and will be treated as the owner of the property.—Dept. Order (T. D. 11760).

Payment of Duty on Wrecked Goods.—The matter was submitted to the Solicitor of the Treasury, who advises that conceding the correctness of the decision in the *Oregon* case, it does not apply to a case of this kind, when the goods were brought to port and regularly entered and appraised under the provisions of section 2928, Revised Statutes. The solicitor refers to the decision of Judge Betts in the case of the *Waterloo* (I. B. and H., 114), where it is held that wrecked goods must pay duties the same as other goods, and also to the act of February 23, 1887 (24 Stat., 415), which specially provides for the payment of duties on goods which may be regarded as the property of the underwriters or the salvors.—Dept. Order (T. D. 9598).

Wrecked Goods Should Be Entered by Appraisement, According to Value and Condition at Time of Importation.—This construction is in the main correct that no allowance of damage, as such, can be made on such merchandise, but it was the intention of the instructions to allow all of the cargo saved and brought from the wrecked vessel to be entered by appraisement, under the provisions of section 2928, Revised Statutes, as wrecked goods, without regard to any question of allowance of damage, so that the iron and steel portion should be allowed entry by appraisement on its value and condition at the time of importation.—Dept. Order (T. D. 8028).

Goods From Stranded Vessel.—It appears that the importing vessel was not wrecked on the Long Island shore, as alleged, but was simply stranded, and was afterwards raised and conveyed to port with the greater portion of her cargo on board, and, also, that all entries of the goods composing the cargo so far were made by invoices.

In view of such reports, and of the previous rulings in similar cases, the department concurs in the opinion that the goods in question can not be considered as having been recovered from a wreck, and consequently that they are not entitled to entry by appraisement under section 2928.—Dept. Order (T. D. 7554).

Merchandise Injured at Sea.—The application to enter by appraisement as wrecked goods 500 cases of wine imported per *Catharine*, which vessel took fire at sea and put into St. Thomas, where the fire was extinguished with damage to the cargo, can not be granted.

The importation in question does not consist of wrecked goods, or goods taken from a wreck, within the meaning of section 2928, Revised Statutes.—Dept. Order (T. D. 7326).

M. That all articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further*, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

1913 Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

No articles or materials received into such bonded manufacturing warehouse shall be withdrawn or removed therefrom except for direct shipment and exportation or for transportation and immediate exporta-

tion in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the collector of the port, who shall certify to such shipment and exportation, or lading for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: *Provided*, That the waste material or by-products incident to the processes of manufacture, including waste derived from cleaning rice in bonded warehouses under Act of March twenty-fourth, eighteen hundred and seventy-four, in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected, by law, if such waste or by-products were imported from a foreign country. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

A careful account shall be kept by the collector of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturers containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

1913 Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom: *Provided*, That cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported under such regulations as the Secretary of the Treasury may prescribe, and the payment of the internal-revenue tax accruing on such cigars in their condition as withdrawn, and the boxes or packages containing such cigars shall be stamped to indicate their character, origin of tobacco from which made, and place of manufacture.

The provisions of Revised Statutes thirty-four hundred and thirty-three shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this Act and to the merchandise conveyed therein.

Sec. 23. That all articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further*, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

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Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same, may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manu-

facturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

No articles or materials received into such bonded manufacturing warehouse shall be withdrawn or removed therefrom except for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the collector of the port, who shall certify to such shipment and exportation, or lading for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: *Provided*, That the waste material or by-products incident to the processes of manufacture in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected, by law, if such waste or by-products were imported from a foreign country. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

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A careful account shall be kept by the collector of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturers containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom.

The provisions of Revised Statutes thirty-four hundred and thirty-three shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this Act and to the merchandise conveyed therein.

SEC. 15. That all articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further*, That the manufacturer of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

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Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege

shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

No articles or materials received into such bonded manufacturing warehouse shall be withdrawn or removed therefrom except for direct shipment and exportation or for transportation and immediate exportation in bond under the supervision of the officer duly designated therefor by the collector of the port, who shall certify to such shipment and exportation, or lading for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

1897 A careful account shall be kept by the collector of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturers containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom.

The provisions of Revised Statutes thirty-four hundred and thirty-three shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this Act and to the merchandise conveyed therein.

SEC. 9. That all articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty and without having an internal-revenue stamp affixed thereto shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further*, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

1894 Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

No articles or materials received into such bonded manufacturing warehouse shall be withdrawn or removed therefrom except for direct shipment and exportation or for transportation and immediate exportation in bond under the supervision of the officer duly designated therefor by the collector of the port, who shall certify to such shipment and exportation,

or lading for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

A careful account shall be kept by the collector of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturers containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

1894 Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom.

The provisions of Revised Statutes thirty-four hundred and thirty-three shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this Act and to the merchandise conveyed therein.

SEC. 10. That all medicines, preparations, compositions, perfumery, cosmetics, cordials, and other liquors manufactured wholly or in part of domestic spirits, intended for exportation, as provided by law, in order to be manufactured and sold or removed, without being charged with duty and without having a stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, be made and manufactured in warehouses similarly constructed to those known and designated in Treasury regulations as bonded warehouses, class two: *Provided*, That such manufacturer shall first give satisfactory bonds to the collector of internal revenue for the faithful observance of all the provisions of law and the regulations as aforesaid, in amount not less than half of that required by the regulations of the Secretary of the Treasury from persons allowed bonded warehouses. Such goods, when manufactured in such warehouses, may be removed for exportation under the direction of the proper officer having charge thereof, who shall be designated by the Secretary of the Treasury without being charged with duty, and without having a stamp affixed thereto. Any manufacturer of the articles aforesaid, or any of them, having such bonded warehouse as aforesaid, shall be at liberty, under such regulations as the Secretary of the Treasury may prescribe, to convey therein any materials to be used in such manufacture which are allowed by the provisions of law to be exported free from tax or duty, as well as the necessary materials, implements, packages, vessels, brands, and labels for the preparation, putting up, and export of the said manufactured articles; and every article so used shall be exempt from the payment of stamps and excise duty by such manufacturer. Articles and materials so to be used may be transferred from any bonded warehouse in which the same may be, under such regulations as the Secretary of the Treasury may prescribe, into any bonded warehouse in which such manufacture may be conducted, and may be used in such manufacture, and when so used shall be exempt from stamp and excise duty; and the receipt of the officer in charge as aforesaid shall be received as a voucher for the manufacture of such articles. Any materials imported into the United States may, under such rules as the Secretary of the Treasury may prescribe, and under the direction of the proper officer, be removed in original packages from on shipboard, or from the bonded warehouse in which the same may be, into the bonded warehouse in which such manufacture may be carried on, for the purpose of being used in such manufacture, without payment of duties thereon, and may there be used in such manufacture. No article so removed, nor any article manufactured in said bonded warehouse, shall be taken therefrom except for exportation, under the direction of the proper officer having charge thereof as aforesaid, whose certificate,

1890

describing the articles by their mark or otherwise, the quantity, the date or importation, and name of vessel, with such additional particulars as may from time to time be required, shall be received by the collector of customs in cancellation of the bond or return of the amount of foreign import duties. All labor performed and services rendered under these regulations shall be under the supervision of an officer of the customs, and at the expense of the manufacturer.

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1883 (No corresponding provision.)

N. Subsection 1. That the works of manufacturers engaged in smelting or refining, or both, of ores and crude metals, may upon the giving of satisfactory bonds be designated as bonded smelting warehouses. Ores or crude metals may be removed from the vessel or other vehicle in which imported, or from a bonded warehouse, into a bonded smelting warehouse without the payment of duties thereon and there smelted or refined, or both, together with ores or crude metals of home or foreign production: *Provided*, That the bonds shall be charged with the amount of duties payable upon such ores and crude metals at the time of their importation, and the several charges against such bonds may be canceled upon the exportation or delivery to a bonded manufacturing warehouse established under Paragraph M of this section of an amount of the same kind of metal equal to the actual amount of dutiable metal producible from the smelting or refining, or both, of such ores or crude metals as determined from time to time by the Secretary of the Treasury: *And provided further*, That the said metals so producible, or any portion thereof, may be withdrawn for domestic consumption, or transferred to a bonded customs warehouse, and withdrawn therefrom, and the several charges against the bonds canceled upon the payment of the duties chargeable against an equivalent amount of ores or crude metals from which said metal would be producible in their condition as imported: *And provided further*, That on the arrival of the ores and crude metals at such establishments they shall be sampled and assayed according to commercial methods under the supervision of Government officers, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer: *Provided further*, That antimonial lead produced in said establishments may be withdrawn for consumption upon the payment of the duties chargeable against it as type metal under existing law and the charges against the bonds canceled in a similar sum: *Provided further*, That all labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury, and at the expense of the manufacturer: *Provided further*, That all regulations for the carrying out of this section shall be prescribed by the Secretary of the Treasury.

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SEC. 24. That the works of manufacturers engaged in smelting or refining, or both, of ores and crude metals, may upon the giving of satisfactory bonds be designated as bonded smelting warehouses. Ores or crude metals may be removed from the vessel or other vehicle in which imported, or from a bonded warehouse, into a bonded smelting warehouse without the payment of duties thereon and there smelted or refined, or both, together with other ores or crude metals of home or foreign production: *Provided*, That the several charges against such bonds may be canceled upon the exportation or delivery to a bonded manufacturing warehouse, established under section twenty-three of this Act, of the actual amount of lead produced from the smelting or refining, or both, of such ores or crude metals: *And provided further*, That said lead may be withdrawn for domestic consumption or transferred to a bonded customs warehouse and withdrawn therefrom upon the payment of the duties chargeable against it in that condition: *Provided further*, That all labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury, and at the expense of the manufacturer: *Provided further*, That all regulations for the carrying out of this section shall be prescribed by the Secretary of the Treasury.

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SEC. 29. That the works of manufacturers engaged in smelting or refining metals, or both smelting and refining, in the United States may be designated as bonded warehouses under such regulations as the Secre-

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1897 tary of the Treasury may prescribe: *Provided*, That such manufacturers shall first give satisfactory bonds to the Secretary of the Treasury. Ores or metals in any crude form requiring smelting or refining to make them readily available in the arts, imported into the United States to be smelted or refined and intended to be exported in a refined but unmanufactured state, shall, under such rules as the Secretary of the Treasury may prescribe, and under the direction of the proper officer, be removed in original packages or in bulk from the vessel or other vehicle on which they have been imported, or from the bonded warehouse in which the same may be, into the bonded warehouse in which such smelting or refining, or both, may be carried on, for the purpose of being smelted or refined, or both, without payment of duties thereon, and may there be smelted or refined, together with other metals of home or foreign production: *Provided*, That each day a quantity of refined metal equal to 90 per centum of the amount of imported metal smelted or refined that day shall be set aside, and such metal so set aside shall not be taken from said works except for transportation to another bonded warehouse or for exportation, under the direction of the proper officer having charge thereof as aforesaid, whose certificate, describing the articles by their marks or otherwise, the quantity, the date of importation, and the name of vessel or other vehicle by which it was imported, with such additional particulars as may from time to time be required, shall be received by the collector of customs as sufficient evidence of the exportation of the metal, or it may be removed under such regulations as the Secretary of the Treasury may prescribe, upon entry and payment of duties, for domestic consumption, and the exportation of the 90 per centum of metals hereinbefore provided for shall entitle the ores and metals imported under the provisions of this section to admission without payment of the duties thereon: *Provided further*, That in respect to lead ores imported under the provisions of this section the refined metal set aside shall either be reexported or the regular duties paid thereon within six months from the date of the receipt of the ore. All labor performed and services rendered under these regulations shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury, and at the expense of the manufacturer.

1894 SEC. 21. That the works of manufacturers engaged in smelting or refining metals, or both smelting and refining, in the United States may be designated as bonded warehouses under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That such manufacturers shall first give satisfactory bonds to the Secretary of the Treasury. Ores or metals in any crude form requiring smelting or refining to make them readily available in the arts, imported into the United States to be smelted or refined and intended to be exported in a refined but unmanufactured state, shall, under such rules as the Secretary of the Treasury may prescribe, and under the direction of the proper officer, be removed in original packages or in bulk from the vessel or other vehicle on which they have been imported, or from the bonded warehouse in which the same may be, into the bonded warehouse in which such smelting or refining, or both, may be carried on, for the purpose of being smelted or refined, or both, without payment of duties thereon, and may there be smelted or refined, together with other metals of home or foreign production: *Provided*, That each day a quantity of refined metal equal to the amount of imported metal smelted or refined that day shall be set aside, and such metal so set aside shall not be taken from said works except for transportation to another bonded warehouse or for exportation, under the direction of the proper officer having charge thereof as aforesaid, whose certificate, describing the articles by their marks or otherwise, the quantity, the date of importation, and the name of vessel or other vehicle by which it was imported, with such additional particulars as may from time to time be required, shall be received by the collector of customs as sufficient evidence of the exportation of the metal, or it may be removed under such regulations as the Secretary of the Treasury may prescribe, upon entry and payment of duties, for domestic consumption. All labor performed and services rendered under these regulations shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury, and at the expense of the manufacturer.

SEC. 24. That the works of manufacturers engaged in smelting or refining metals in the United States may be designated as bonded warehouses under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That such manufacturers shall first give satisfactory bonds to the Secretary of the Treasury. Metals in any crude form requiring smelting or refining to make them readily available in the arts, imported into the United States to be smelted or refined and intended to be exported in a refined but unmanufactured state, shall, under such rules as the Secretary of the Treasury may prescribe and under the direction of the proper officer, be removed in original packages or in bulk from the vessel or other vehicle on which it has been imported, or from the bonded warehouse in which the same may be into the bonded warehouse in which such smelting and refining may be carried on for the purpose of being smelted and refined, without payment of duties thereon, and may there be smelted and refined, together with other metals of home or foreign production: *Provided*, That each day a quantity of refined metal equal to the amount of imported metal refined that day shall be set aside, and such metal so set aside shall not be taken from said works except for exportation, under the direction of the proper officer having charge thereof as aforesaid, whose certificate, describing the articles by their marks or otherwise, the quantity, the date of importation, and the name of vessel or other vehicle by which it was imported, with such additional particulars as may from time to time be required, shall be received by the collector of customs as sufficient evidence of the exportation of the metal, or it may be removed, under such regulations as the Secretary of the Treasury may prescribe, to any other bonded warehouse, or upon entry for, and payment of duties, for domestic consumption. All labor performed and services rendered under these regulations shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury, and at the expense of the manufacturer.

DECISIONS UNDER THE ACT OF 1909.

1883 (No corresponding provision.)

By-Product of Lead Bullion Refined in Bonded Warehouse.—Roughly smelted lead bullion, imported and deposited in the bonded smelting warehouse of the importer; later refined, precious metals and a percentage of refined lead being extracted and leaving a by-product of lead, antimony, and other substances; this by-product is not to be deemed bullion, but type metal, and when this is withdrawn from the bonded warehouse for domestic consumption it is dutiable under paragraph 191, tariff act of 1909.—*American Smelting & Refining Co. v. U. S. (Ct. Cust. Appls.)*, T. D. 31955; (G. A. 7148) T. D. 31201 reversed.

Lead Withdrawn from Bonded Smelting Warehouse.

LEAD BULLION SMELTED IN BOND.—Where imported lead bullion is smelted in a bonded smelting warehouse and a portion of the product is withdrawn for domestic consumption in the form of antimonial lead (or type metal), duty must be paid upon the whole weight of the metal withdrawn at the rate provided in paragraph 182, tariff act of 1909, for "lead bullion," or "lead," rather than at the rate provided in paragraph 191 for "type metal."

DUTY ON WITHDRAWAL.—Upon the importation of the "lead bullion" the right of the Government to duties under paragraph 182 accrued, and can not be impaired unless there is some saving clause elsewhere in the act. The provision of section 24, that on the withdrawal for domestic consumption, from a bonded smelting warehouse, of the lead produced from the smelting of the crude metal, there shall be paid "the duties chargeable against it in that condition," is applicable only to a withdrawal of lead—that is, commercial lead. It does not permit the product to bear a less rate of duty when withdrawn than when imported.

PRIVILEGES OR EXEMPTIONS—STRICT CONSTRUCTION.—The grant of a privilege, or exemption, such as is contained in section 24, is to be construed most favorably to the Government.—T. D. 31201 (G. A. 7148).

DECISIONS UNDER THE ACT OF 1897.

Wastage Allowance in Refining and Smelting.—Section 29 of the act of July 24, 1897, providing for the smelting and refining of metals in bond, and requiring that each day a quantity of refined metal equal to 90 per cent of the amount of the imported metal smelted or refined that day shall be set aside and exported in order to release said bond, requires that said 90 per cent shall be of the quantity of imported metal determined by Government assay, or otherwise, to be contained in the crude bullion or ore when imported, prior to such smelting or refining.—T. D. 25133 (G. A. 5620).

Construction—Smelting and Refining Metals—Crude Ores—Lead Bullion.—Section 29, tariff act of July 24, 1897, relating to the importation of certain crude ores and metals to be refined or smelted in bonded warehouses, contains the proviso "that each day a quantity of refined metal equal to 90 per cent of the amount of imported metal smelted or refined that day shall be set aside, and the exportation of the 90 per cent of metals shall entitle the ores and metals imported under " said section to admission without payment of duty. *Held*, in regard to importations of lead bullion containing lead and antimony, that this means 90 per cent of the pure metal contained in the crude metal as imported, as determined by assay at the time of importation, and not of the pure metal recovered by smelting and refining.—Guggenheim Smelting Co. v. U. S. (C. C. A.), T. D. 24888.

N. Subsection 2. That from and after the first day of January, nineteen hundred and fourteen, under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, any farmer or association of farmers, any fruit grower or association of fruit growers, or other person or persons may manufacture alcohol free of tax for denaturation only, out of any of the products of farms, fruit orchards, or any substance whatever, on condition that such alcohol shall be directly conveyed from the still by continuous closed pipes to locked and sealed receptacles in which the same may be rendered unfit for use as an intoxicating beverage by an admixture of such denaturing materials as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, or where such alcohol is of insufficient proof to be denatured, the same may be transferred in bond from such locked and sealed receptacles to a central distilling and denaturing plant as herein-after provided.

1913 That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may authorize the establishment of central distilling and denaturing plants to which alcohol produced under the provisions of this Act, free of tax, may be transferred, redistilled and denatured under such regulations, and upon the execution of such notices and bonds as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

That any central distilling and denaturing plant provided for in section two of this Act may, in addition to the spirits produced under section one of this Act, use any of the products of farms, fruit orchards, or any substance whatever, for the manufacture of alcohol for denaturation only: *Provided*, That at such distilleries the use of cisterns or tanks of such size and construction as may be deemed expedient shall be permitted in lieu of distillery bonded warehouses under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

That any person who under the provisions of this Act shall fail to register, or shall falsely register, any still or distilling apparatus used by him, or who shall fraudulently remove or conceal any distilled spirits produced by him, or who shall fail to comply with all the requirements of this Act, or any regulations issued pursuant thereto, respecting the production and denaturation of distilled spirits; and any person who shall recover or attempt to recover by redistillation or by any other

process or means, any distilled spirits after the same has been denatured, shall, on conviction, for each offense, be fined not more than \$5,000 or be imprisoned for not more than five years, or both, and shall in addition thereto forfeit to the United States all real and personal property used in connection therewith.

1913 That subsection two of section thirty-two hundred and forty-four of the Revised Statutes of the United States shall not apply to stills and worms manufactured for use in distilling, provided for in section one of this Act, but the manufacturer or owner of such distilling apparatus shall give notice to the collector of internal revenue of the district in which the said apparatus is made or to which it is removed, of each still, or worm, manufactured, sold, used, or exchanged under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Section four of the Act of March second, nineteen hundred and seven, amendatory of the Act of June seventh, nineteen hundred and six, is hereby repealed, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall exempt distillers operating under this Act from the provisions of sections thirty-two hundred and eighty-three and thirty-three hundred and nine of the Revised Statutes of the United States, and from such other provisions of existing laws relating to distilleries, including the giving of bonds, as may be deemed expedient by said officials: *Provided, however,* That the Commissioner of Internal Revenue shall assess and collect the tax on any spirits unlawfully produced or produced and not accounted for by any such distiller.

1913 O. That upon the exportation of articles manufactured or produced in the United States by the use of imported merchandise or materials upon which customs duties have been paid, the full amount of such duties paid upon the quantity of materials used in the manufacture or production of the exported product shall be refunded as drawback, less 1 per centum of such duties: *Provided,* That where a principal product and a by-product result from the manipulation of imported material and only the by-product is exported, the proportion of the drawback distributed to such by-product shall not exceed the duty assessable under this Act on a similar by-product of foreign origin if imported into the United States. Where no duty is assessable upon the importation of a corresponding by-product, no drawback shall be payable on such by-product produced from the imported material; if, however, the principal product is exported, then on the exportation thereof there shall be refunded as drawback the whole of the duty paid on the imported material used in the production of both the principal and the by-product, less 1 per cent, as hereinbefore provided: *Provided further,* That when the articles exported are manufactured in part from domestic materials, the imported materials or the parts of the articles manufactured from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further,* That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe.

That on the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) hereafter manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used: *Provided,* That no other than domestic tax-paid alcohol shall have been used in the manufacture or production of such preparations. Such drawback

shall be determined and paid under such rules and regulations, and upon the filing of such notices, bonds, bills of lading, and other evidence of payment of tax and exportation as the Secretary of the Treasury shall prescribe.

1913 That the provisions of this section shall apply to materials used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

SEC. 25. That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less 1 per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe.

1909

That on the exportation of medicinal or toilet preparations (including perfumery) hereafter manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used: *Provided*, That no other than domestic tax-paid alcohol shall have been used in the manufacture or production of such preparations. Such drawback shall be determined and paid under such rules and regulations, and upon the filing of such notices, bonds, bills of lading, and other evidence of payment of tax and exportation as the Secretary of the Treasury shall prescribe.

That the provisions of this section shall apply to materials used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

SEC. 30. That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less 1 per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe.

1897

1894 SEC. 22. That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less 1 per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe.

1890 SEC. 25. That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less 1 per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials, the imported materials or the parts of the articles made from such materials shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe.

PAR. 328. There shall be allowed on the imported tinplate used in the manufacture of cans, boxes, packages, and all articles of tinware exported, either empty or filled with domestic products, a drawback equal to the duty paid on such tinplate, less 1 per centum of such duty, which shall be retained for the use of the United States.

1883 (No corresponding provision.)

DECISIONS UNDER THE ACT OF 1913.

Deteriorated or Unsalable Merchandise withdrawn from domestic trade is not subject for allowance of drawback.—Opinion of Attorney General (T. D. 36932).

Tutuila and Guam not foreign countries within the meaning of the tariff laws. Articles shipped to Tutuila and Guam not entitled to drawback. Imported merchandise can not be withdrawn from bond in the United States without payment of duties for shipment to Tutuila and Guam. Opinion of the Attorney General, dated November 6, 1913.—Dept. Order (T. D. 33898).

Porto Rico and Philippine Islands.—Drawback allowed on articles upon which an internal revenue tax has been paid. Act of March 4, 1915.—Dept. Order (T. D. 35316).

DECISIONS UNDER THE ACT OF 1897.

Bottled-Beer Corks.

ARTICLES MANUFACTURED FROM IMPORTED MATERIALS.—Imported corks were subjected to an elaborate process, consisting of sorting, branding, cleansing, steaming, drying, and chemical bathing and coating, this being done to fit them for use in the export of beer. *Held*, that they are not “articles manufactured” from imported materials so as to be subject to drawback under section 30, tariff act of 1897.

“**MANUFACTURE.**”—“Manufacture” implies change; but not every change is manufacture, though the result of treatment, labor, and manipulation. Something more is necessary. There must be a transformation; a new and different article must emerge, having a distinctive name, character, and use. And a cork which has been put through elaborate cleansing, antiseptic, and other improving processes, but which still remains a cork, is not “manufactured” within the meaning of section 30, tariff act of 1897.

“**ARTICLES MANUFACTURED.**”—Under section 30, tariff act of 1897, permitting drawback “on the exportation of articles manufactured [from] imported materials,” *Held* as to an exportation of bottled beer, in which the beer and the corks were made from imported materials, that beer alone excluding the corks, is the “article” exported within the meaning of the law.—*Anheuser-Busch Brewing Association v. U. S. (U. S.), T. D. 28778.*

Bottled-Beer Corks and Bottles.—Bottles and corks in which beer is bottled and exported for sale are not “imported materials used in the manufacture” of such beer within the meaning of the drawback provisions, although the beer be bottled and corked and subsequently heated for its better preservation. The imported material must enter into and form one of the ingredients of the manufactured article. Affirming the decision of the Court of Claims.—*Joseph Schlitz Brewing Co v. U. S., 181 U. S., 584.*

Imported bottles, corks, and tin foil reexported as cases or coverings for beer made in this country are not “materials used in the manufacture of articles manufactured or produced in the United States” within the meaning of this act.—*Beadleston v. U. S. (D. C.), 104 Fed. Rep., 295.*

DECISIONS UNDER THE ACT OF 1894.

Linseed Oil Cake.—Where linseed, upon which a duty of 20 cents a bushel has been paid, was manufactured into oil and oil cake, and the oil cake exported, the drawback should be computed in proportion to the value which the exported oil cake bears to the imported linseed. 78 Fed. Rep., 467 reversed.

Linseed oil cake manufactured from imported linseed is not waste, but a manufactured article and therefore entitled to drawback.—*U. S. v. Dean Linseed Oil Co. (C. C. A.), 87 Fed. Rep., 453.*

DECISIONS UNDER THE ACT OF 1890.

No Drawback Allowed on Coal Used by Steam Vessels.—The provision allowing drawback on coal used by steam vessels as amended by the act of June 19, 1886, section 10 (24 Stat., 81), was not repealed by paragraph 432, act of 1890, but the drawback, less 1 per cent thereof, is continued in force by the proviso to section 25, act of 1890.—*U. S. v. Allen (52 Fed. Rep., 575)*; affirmed (C. C. A.), 58 Fed. Rep., 864; reversed, *U. S. v. Allen, 163 U. S., 499.*

DECISIONS UNDER THE ACT OF 1883.

Coal for Steamships.—The act of June 19, 1886, section 10 (24 Stat., 81), which restricts the right of drawback upon bituminous coal (act of 1883) to

vessels of the United States is prospective and does not take away the right to the drawback on coal which had previously been reshipped on vessels not of the United States.

This court has jurisdiction of an action to recover the drawback on bituminous coal given by this paragraph.—*Kennedy v. U. S.*, 23 C. Cls. R., 363.

Coal imported in June, 1886, and entered for warehousing under bond, to be withdrawn for use as fuel on steamship owned by importers. Coal withdrawn after July 1, 1886. *Held*, that this section confers a privilege, not in the nature of a contract, liable to be withdrawn at any time; that the act of June 19, 1886, section 10 (24 Stat., 81), providing that after July 1, 1886, the right of drawback shall apply only to vessels of the United States, is not retroactive, but, nevertheless, is applicable to coal imported before its enactment, if the privilege of withdrawal is not exercised before July 1, 1886.—*The Cunard Steamship Co. v. U. S.*, 25 C. Cls. R., 428.

Box Shooks—Manufacture.—The Tide Water Oil Co. imported from Canada shooks and from Europe steel rods upon which importation duties were paid. The box shooks were manufactured in Canada from boards, first being planed and then cut into required lengths and widths, intended to be substantially correct for making boxes without further labor than nailing shooks together. They were then tied up in bundles of sides, of ends, of bottoms, and of tops of from 15 to 25 in a bundle. The shooks were, at the factory of the company, constructed into boxes or cases by nailing the same together with nails manufactured in the United States out of steel rods imported from Europe, and by trimming when defective in length, to make the boxes without projecting parts. The cost of the labor expended in the United States in the necessary handling, nailing, and trimming was equal to about one-tenth of the value of the boxes. The boxes were filled with cans and exported. For about four years prior to July 1, 1889, the department allowed drawback. On that date the Secretary changed this ruling and refused to allow drawback. *Held*, That the company was not entitled to drawback. 31 C. Cls. R., 90 affirmed.—*Tide Water Oil Co. v. U. S.*, 171 U. S., 210.

The purpose of this section is not to increase the revenue or encourage export trade, but to foster domestic manufactures.

Boxes made of shooks manufactured in Canada, planed and of the requisite length and width, so that nothing remains to be done except nail the shooks together and trim the boxes where the shooks are defective in length or width, are not domestic manufactures within this section.

The intent of this section is that the manufacture be within the United States; that the exported article shall not have been partly manufactured elsewhere.

The mere fastening together of imported material which was designed and shaped for that specific use abroad does not constitute a manufacture.

Material is matter intended to be used in the creation of a mechanical structure. Manufacture is a transformation of the material used into a new and different article.—*The Tide Water Oil Co. v. U. S.*, 31 C. Cls. R., 90.

Grain Bags Leased to Vessel.—No right of drawback arises when bags made of imported material are leased to steamers for the transportation of grain on foreign voyages with the understanding that they are to be brought back. Such bags were neither exported nor imported, but were a part of the furniture of the ship.

R. S. 3477, relating to the assignment of claims, affects only perfected claims, and does not apply to a claim for drawback on reexported goods made in the name of one to whom the outward bill of lading is indorsed, with authority to

act for customhouse purposes, since the regulations of the Treasury provide that the person producing the bill of lading so indorsed shall be deemed the exporter for the purpose of making entry and receiving the drawback or refund.

The six-year limitation begins to run from the date of exportation, not from the date of the decision of the Treasury Department passing upon the claim.—*Kennedy v. U. S. (C. C.)*, 95 Fed. Rep., 127.

DECISIONS UNDER STATUTES PRIOR TO 1883.

Additional Duties, No Drawback of.—Additional duties by way of penalty levied under section 8, act of 1846, do not make part of the drawback to be returned on exportation.—*Bartlett v. Kane*, Taney, 186; 2 Fed. Cas., 971; affirmed by 16 How., 263.

Drawback Law.—The act of August 5, 1861 (12 Stat., 292), section 4, having declared that on exportation there shall be allowed a drawback equal to the amount of duty paid on such material, and the Secretary having established by a regulation that as regarded the cake resulting from the manufacture of linseed oil into oil and cake the latter represents at 17 cents per hundred pounds the duty on the imported seed so manufactured into cake, there resulted a contract that, when exported, the Government would refund, repay, pay back, this amount as a drawback to the importer. If this is not so it is because it is impossible to make a contract when the details of its execution or performance are left to officers who refuse to carry them out. The Court of Claims makes the mistake of supposing that the claim is founded upon the regulations of the Secretary. This view can not be sustained. It is the law which gives the right, and the fact that the customs officers refuse to obey these regulations can not defeat a right which the act gives.

Claimant imported linseed-oil cake and was entitled to drawback under section 4, act of August 5, 1861. The collector, acting under instructions from the Secretary, refused to comply with the law and regulations. *Held*, that the claimant being entitled to drawback may, when payment is refused, maintain an action therefor in the Court of Claims.

The Secretary can not, by an act forbidding the collector to proceed under drawback regulations, defeat the law allowing drawback.—*Campbell v. U. S.*, 107 U. S., 407, 410, 411; 12 C. Cls. R., 470 reversed.

Drawback on Sugar.—Where the right of a party to recover rests upon a statute and does not require the action of a revenue officer to determine the right or fix the amount, the case is not a revenue case within the intent of *Nichols v. U. S.* (7 Wall., 122). Being founded upon a law of the United States it is within the jurisdiction of this court. This court has jurisdiction of a case to recover drawback on exported sugar.

In 1875 the sugar known to the trade as "Standard A Coffee White" came within the classification of the Treasury regulations then existing of "refined crystalline sugar," and was entitled to a drawback of 3½ cents a pound.—*Durant v. U. S.*, 28 C. Cls. R., 356.

Exported Merchandise.—When goods entered in debenture are reexported, have passed through a foreign customhouse, are landed and have gone into the general mass of property, and like that subject to be consumed, and bought and sold by retail, they are no longer, in the sense of the act of March 3, 1845 (5 Stat., 750), the same goods.—*U. S. v. Whidden*, 3 Ware, 269; 28 Fed. Cas., 535.

Forfeiture.—A forfeiture may be incurred by entering for drawback under a false denomination sugars not previously imported and subject to duty.—*Barlow v. U. S.*, 7 Pet., 404.

Fraudulent Relanding.—Where sugars (1830) entered for exportation for the benefit of drawback, after being landed on the vessel are fraudulently relanded on the dock, the marks obliterated and other marks substituted, and then replaced on the vessel in the presence of the customs officials, so as to show on their return a greater number of casks and a larger quantity of sugar than was actually put on board, the transaction is a relanding within the meaning of the drawback bond and constitutes a breach thereof.

The surety on a customhouse bond, conditioned that certain sugars entered for exportation for the benefit of drawback, should not be relanded in the United States, is estopped by the recitals of the bond to deny that the quantity therein specified was in fact laden upon the vessel.—*U. S. v. Heckscher*, 3 Hunt. Mer. Mag., 71; 26 Fed. Cas., 251.

Bond given conditioned that the party should produce the certificates and other proof required by law of the landing of the merchandise at some foreign port, etc. False and fraudulent certificates were produced and the signature and seal of the bond were torn off and destroyed. *Held*, that the United States might declare on the mutilated bond.—*U. S. v. Spalding*, 2 Mason, 478; 27 Fed. Cas., 1278.

Frauds in Obtaining Drawbacks.—Description of the manner in which frauds on the revenue are perpetrated, in obtaining from the Government the payment of money on drawbacks, on the exportation of goods which have paid internal-revenue taxes.—Benedict, district judge, charge to the grand jury, May 10, 1869 (6 Blatchf., 555), 30 Fed. Cas., 978.

Sugar.—Section 84, act of 1799, has not (1830) been repealed.

Sugar entitled to drawback on exportation must have been refined in the United States.

What are refined sugars within the meaning of the act, and such as entitle the claimant to the drawback allowed by law upon sugar refined in the United States and exported therefrom, must be gathered from the commercial sense in which the distinguishing qualities and properties of this commodity are known and understood. What is known as "bastars" or "bastard sugar" is not refined sugar.—*U. S. v. 85 Hogsheads of Sugar*, 2 Paine, 54; 25 Fed. Cas., 991.

1913 **P.** That upon the reimportation of articles once exported, of the growth, product, or manufacture of the United States, upon which no internal tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the internal-revenue laws upon such articles, except articles manufactured in bonded warehouses and exported pursuant to law, which shall be subject to the same rate of duty as if originally imported, but proof of the identity of such articles shall be made under general regulations to be prescribed by the Secretary of the Treasury.

1909 **SEC. 26.** That upon the reimportation of articles once exported, of the growth, product, or manufacture of the United States, upon which no internal tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the internal-revenue laws upon such articles, except articles manufactured in bonded warehouses and exported pursuant to law, which shall be subject to the same rate of duty as if originally imported, but proof of the identity of such articles shall be made under general regulations to be prescribed by the Secretary of the Treasury.

SEC. 27. That upon the reimportation of articles once exported, of the growth, product, or manufacture of the United States, upon which no internal tax has been assessed or paid, or upon which such tax has been

1897 paid and refunded by allowance or drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the internal-revenue laws upon such articles, except articles manufactured in bonded warehouses and exported pursuant to law, which shall be subject to the same rate of duty as if originally imported.

SEC. 19. That upon the reimportation of articles once exported, of the growth, product, or manufacture of the United States, upon which no internal tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the internal-revenue laws upon such articles, except articles manufactured in bonded warehouses and exported pursuant to law, which shall be subject to the same rate of duty as if originally imported.

SEC. 22. That upon the reimportation of articles once exported, of the growth, product, or manufacture of the United States, upon which no internal tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the internal-revenue laws upon such articles, except articles manufactured in bonded warehouses and exported pursuant to law, which shall be subject to the same rate of duty as if originally imported.

SEC. 2500. Upon the reimportation of articles once exported, of the growth, product, or manufacture of the United States, upon which no internal tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the internal-revenue laws upon such articles.

DECISIONS UNDER THE ACT OF 1897.

What Evidence Necessary to Rebut Assessment.—Where the collector of customs assesses duty on American manufactures exported and returned to this country, and of the kind described in paragraph 483, tariff act of 1897, and this assessment is equal to the amount of drawback allowed by law on the exportation of the articles, the burden is cast on the importer to offer satisfactory evidence that such drawback was never actually paid either to the manufacturer, the producer, exporter, or agent of such parties, who are authorized to receive it under existing laws or Treasury regulations.—T. D. 29544 (G. A. 6866).

Distilled Spirits not exported in good faith not entitled on return to United States to entry under section 2500, Revised Statutes, nor to warehousing privileges. Opinion of United States Attorney General, December 4, 1908.—Dept. Order (T. D. 29432).

Reimported Unmanufactured Tobacco of American Production.—Unmanufactured scrap tobacco of American production, exported from a bonded warehouse without the payment of any internal-revenue tax, is, on reimportation into the United States, subject, under section 27, tariff act of 1897, to a duty equal only to the internal-revenue tax imposed on such merchandise. As such tobacco is not manufactured and has not been subjected to an allowance of drawback, it is not included either in the exception in said section 27, which relates only to "articles manufactured," or in the provisos of paragraph 483 of said act, which relate only to merchandise upon which an allowance of drawback has been made or which has been manufactured. In re Graves (G. A. 4580) followed.—T. D. 23443 (G. A. 5056).

Reimported Whisky.—A reimportation of exported merchandise is ordinarily to be considered, for all customs purposes, as a new importation, and is dutiable accordingly.

Whisky, the product or manufacture of the United States, which, after being exported from bonded warehouse, is reimported into this country, is dutiable

under section 27, tariff act of July 24, 1897, on the basis of the quantity or number of gallons contained at the time of reimportation, and not at the date of exportation.—T. D. 21504 (G. A. 4527).

American Whisky Bottled Abroad.

REIMPORTED MERCHANDISE OF AMERICAN ORIGIN.—American whisky, exported from the United States in barrels and bottled abroad, and "upon which no internal-revenue tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback," is, under section 27 of the tariff act of 1897, subject upon reimportation only to a duty equal to the tax imposed by the internal-revenue laws of the United States, namely, \$1.10 per proof gallon.

CONSTRUCTION OF STATUTES.—Section 27 has a different field of operation from paragraph 483 of said act; and only the former applies to reimported articles of domestic origin, once exported, and "upon which no internal tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback," excepting only "articles manufactured in bonded warehouses and exported pursuant to law."

ADVANCED IN VALUE OR IMPROVED IN CONDITION.—The provision in paragraph 483 prohibiting the admission, free of duty, of reimported domestic merchandise which has "been advanced in value or improved in condition" while abroad, has no application to such as comes within the scope of section 27.

PROOF OF IDENTITY.—The identity of merchandise of American origin, once exported, and reimported under the provisions of section 27, may be proved before the Board of General Appraisers, according to the ordinary rules of evidence; and a compliance with the method of proof prescribed by the Secretary of the Treasury, under the authority of paragraph 483, is not necessary with such cases. *U. S. v. Goodsell* (91 Fed. Rep., 519), *In re Goodsell* (G. A. 4408), and *In re Rothchild* (G. A. 4527) followed. *Flagler v. Kidd* (78 Fed. Rep., 841) distinguished.—T. D. 21675 (G. A. 4580).

DECISIONS UNDER THE ACT OF 1894.

American Whisky in Bonded Warehouse.—Whisky of American manufacture was exported and then reimported and entered in bond for warehousing while the tariff act of 1890 was in force. It was not withdrawn from bond until after the tariff act of August 28, 1894, went into operation, and was assessed for duty at the rate of \$1.10 per gallon under sections 19 and 48 of the latter act. The importers protested, claiming that it was dutiable at 90 cents per gallon under the tariff act of 1890. *Held*, that it was dutiable as assessed under the tariff act of 1894. *Louisville Public Warehouse Co. v. U. S.* (34 C. C. A., 687; 92 Fed. Rep., 1020).—T. D. 24769 (G. A. 5468).

American whisky exported and afterwards imported in May, 1892, which was in bonded warehouse on August 28, 1894 (the time of the enactment of the present tariff act), and was not withdrawn for consumption until July 9, 1895 (over three years after importation), is subject to duty under sections 48 and 19 of the tariff act of 1894, and not under the act of 1890.—T. D. 18170 (G. A. 3927).

American Whisky on Withdrawal from Warehouse Under Act of 1894.—American whisky exported without paying internal-revenue tax and imported prior to August 28, 1894. Withdrawn from warehouse for consumption after August 28, 1894. *Held*, to be dutiable at \$1.10 per gallon.—T. D. 15467 (G. A. 2816).

DECISIONS UNDER THE ACT OF 1890.

Domestic Butterine, Reimported.—Butterine subject to an internal-revenue tax of 2 cents a pound (24 Stat., 840) was exported without payment of the tax, and was reimported without being changed. Duty assessed of 2 cents a pound, the importer also affixing internal-revenue stamps to the amount of 2 cents a pound. He claims that the customs duty ought not to have been assessed. *Held*, that the duty was properly assessed and that the remedy of the importer is an application to the Commissioner of Internal Revenue on Form 38, United States Internal Revenue.—T. D. 14562 (G. A. 2354).

Reimported Liquors.—Where a person has removed liquor from a bonded warehouse to Canada without paying the internal-revenue tax, and landed it and permitted it to remain there a month, he is entitled to bring it back to the United States on payment of a duty equal to such tax, notwithstanding that he intended when he sent it to Canada to bring it back.—*Kidd v. Flagler* (C. C.), 54 Fed. Rep., 367.

DECISIONS UNDER STATUTES PRIOR TO THE ACT OF 1883.

Goods Exported and Reimported to Avoid Payment of Internal-Revenue Tax.—Documents from the customhouse to prove the withdrawal of goods from a bonded warehouse and their exportation in a certain vessel are prima facie sufficient to sustain an allegation in the declaration that such things were done with the goods.

Where goods are withdrawn from a bonded warehouse to avoid the payment of internal-revenue tax, exported from a domestic port, carried beyond the jurisdiction of the United States, and then brought back into a domestic port, they are imported goods, although not actually landed in any foreign port or place.

Some of the goods removed from the bonded warehouse and then brought back were seized by the United States as goods unlawfully imported in a certain ship or vessel without having a manifest on board. *Held*, that the record of that proceeding when offered in evidence was not an estoppel to the right of the plaintiffs to recover the goods in this case.—*McGlinchy v. U. S.*, 4 Cliff., 312; 16 Fed. Cas., 118.

Q. That on and after the day when this Act shall go into effect all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to the duties imposed by this Act and to no other duty, upon the entry or the withdrawal thereof: *Provided*, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse, said duties shall be levied and collected upon the weight of such merchandise at the time of its entry.

SEC. 29. That on and after the day when this Act shall go into effect all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to the duties imposed by this Act and to no other duty, upon the entry or the withdrawal thereof: *Provided*, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse, said duties shall be levied and collected upon the weight of such merchandise at the time of its entry.

SEC. 33. That on and after the day when this Act shall go into effect all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to the duties imposed by this Act and to no other duty, upon the entry or the withdrawal thereof: *Provided*, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse, said duties shall be levied and collected upon the weight of such merchandise at the time of its entry.

1897
1894 (No corresponding provision. Section 50, Act of 1890 (post) remained in force.)

SEC. 50. That on and after the day when this Act shall go into effect all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to no other duty upon the entry or the withdrawal thereof than if the same were imported respectively after that day: *Provided*, That any imported merchandise deposited in bond in any public or private bonded warehouse having been so deposited prior to the first day of October, eighteen hundred and ninety, may be withdrawn for consumption at any time prior to February first, eighteen hundred and ninety-one, upon the payment of duties at the rates in force prior to the passage of this Act: *Provided further*, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse said duties shall be levied and collected upon the weight of such merchandise at the time of its withdrawal.

1883 SEC. 10. That all imported goods, wares, and merchandise which may be in the public stores or bonded warehouses on the day and year when this Act shall go into effect, except as otherwise provided in this Act, shall be subjected to no other duty upon the entry thereof for consumption than if the same were imported respectively after that day; and all goods, wares, and merchandise remaining in bonded warehouses on the day and year this Act shall take effect, and upon which the duties shall have been paid, shall be entitled to a refund of the difference between the amount of duties paid and the amount of duties said goods, wares, and merchandise would be subject to if the same were imported respectively after that date.

DECISIONS UNDER THE ACT OF 1913.

Immediate-Transportation Entry.—The goods arrived at the port of New York on June 5, 1913. They were entered for immediate transportation, under bond, to Philadelphia. The merchandise was entered at Philadelphia and the estimated duty deposited on June 10, 1913. Owing to the miscarriage of the merchandise by the railroad it was not received into the custody of the Philadelphia customs officials until October 28, 1913. The merchandise was undoubtedly under bond for transportation until such time as it was delivered at the Philadelphia customhouse, and no permit of delivery was issued for it until the law of 1913 had become effective. See *F. L. Roberts & Co.'s case*, G. A. 6994 (T. D. 30443); *Caballero & Blanco's case*, Ab. 37922; and *U. S. v. Cordero* (1 Ct. Cust. Appls., 107; T. D. 31114).—Ab. 38978.

Goods entered for immediate transportation before the passage of the act of 1913, which arrived at the port of delivery subsequent to the passage of said act, are entitled to classification thereunder, notwithstanding an entry for consumption has been improperly made and permitted by the collector prior to the passage of said act and during the operation of the act of 1909.—T. D. 35171 (G. A. 7693).

Additional Duty—"Imposed by this Act."—Merchandise which was entered for warehouse during the life of the act of 1909 was advanced in value on appraisement and reappraisement, but, as said merchandise was subject to duty at specific rates, no additional or penal duties were levied; but the merchandise remaining in warehouse until after the enactment of the tariff act of 1913, in which statute the merchandise is dutiable at ad valorem rates, is subject to the additional duty imposed by that act.

Imported merchandise in bonded warehouse is in the custody of the Government and under the control of its officers, and the importation is not complete for dutiable purposes until it is withdrawn from warehouse and entered for consumption.

The power to tax is the exercise of the power of sovereignty, and in the exercise of such power there can be no contractual relations between the sovereign and the citizen.—*T. D. 35594 (G. A. 7757).*

Reliquidation of Warehouse Entries.—Reliquidation not necessary of warehouse entries on merchandise imported under the act of 1909 when the rates of duty under the act of 1913 are not changed.—*Dept. Order (T. D. 33949).*

Additional Duty is a Duty "Imposed by this Act."—Under the provisions of the act in effect on the date of importation, the advance then made imposed no penalty on the importers, as their goods were then subject to a specific rate of duty, but under the present act, which was in force at the time of the withdrawal, the goods were subjected to an ad valorem rate of duty, and if imported thereunder would undoubtedly, as conceded by the importers, be liable to a penalty of 1 per cent for each 1 per cent advance.

In the light of these facts the importers contend that no penalty can be legally imposed by reason of the advance made by the appraiser at the time of importation when no penalty attached thereto under the then existing law, and that to penalize the importation now would in effect be a retroactive and consequently an illegal act.

For the reasons set forth in *re Isaacs, Vought & Co.*, *G. A. 200 (T. D. 10550)*; *In re W. H. Horstmann Co.*, *G. A. 7757 (T. D. 35594)*; and *In re Caballero & Blanco*, *G. A. 7740 (T. D. 35530)*, we overrule the protest and affirm the decision of the collector.—*Ab. 38226.*

DECISIONS UNDER THE ACT OF 1909.

Entry Sought After Arrival But Before Unlading of Merchandise.—Entry implies the presence of the merchandise at the time entry is sought to be made and where a consignment of gin on board a mail steamer reached Key West August 3, 1909, and entries of the gin were presented by the importer on August 4, the commodity itself remaining on board ship while the vessel proceeded to another destination, but, returning, called again at Key West on a later day and subsequently to the going into full force and effect of the tariff act, 1909; section 29 of that act governed the entry of the gin August 10, 1909, and it was dutiable as entered on that day.—*U. S. v. Cordero (Ct. Cust. Appls.)*, *T. D. 31114*; (*G. A. 6945*) *T. D. 30161* reversed.

Importation Under Law of 1897—Liquidation Under Law of 1909.

TIME WHEN DUTY ATTACHES TO IMPORTED MERCHANDISE.—Customs duties attached to imported merchandise when it is taken into the port to which it is consigned with intent to unload, and the importer becomes obligated to pay the duty at that time. *U. S. v. Vowell* (5 Cranch, 268); *U. S. v. Arnold* (24 Fed. Cas., 872); *Meredith v. U. S.* (13 Peters, 494); *G. A. 4869 (T. D. 22828).*

SECTION 29 OF THE TARIFF ACT OF 1909.—The duty which the importer becomes obligated to pay is the duty provided by the law in force at the time his merchandise enters the port; and if at this time a new law is about to become effective, changing the rate of such duty, containing a provision such as is contained in section 29 of the act of 1909, he must discharge this obligation by entering the merchandise and paying the duty promptly in order to have his merchandise assessed under the old law.

TENDER OF ENTRY TANTAMOUNT TO ENTERING MERCHANDISE.—The tender to the collector of a proper entry of merchandise that had theretofore arrived at the port is tantamount to entering the same; and where such entry is presented just prior to the expiration of the tariff act of 1897, and the collector refuses to receive the same and the merchandise is subsequently entered after the act of 1909 has taken effect, section 29 of that act does not apply.—T. D. 30161 (G. A. 6945); reversed in T. D. 31114 (C. C. A.), *supra*.

Reliquidation of Warehouse Goods with Protest Pending.—The collector reliquidated under section 29 of the act of 1909 upon goods in warehouse while a protest filed under the act of 1897 covering the same goods was pending on appeal from a decision of the board to the Court of Customs Appeals on the question of dutiability of an item of 2½ per cent commission. *Held*, that as the new tariff act did not change the rate of duty, create any new right, nor alter the dutiable status of these goods, the importers were not bound to protest against the reliquidation made under the law of 1909 upon the same ground as the liquidation protested against under the act of 1897.

The judgment of a court having jurisdiction of the parties and the subject matter is not open to collateral attack by the parties to the proceeding. *U. S. v. Kurtz* (5 Ct. Cust. Appls., —; T. D. 34192).—T. D. 34396 (G. A. 7557).

Where No Actual Tender of Entry Was Made.—It is unnecessary to determine whether the absence of an inspector would validate on a later day a tender of entry made during the inspector's absence, it appearing here no actual tender of entry was made of certain horses it was desired to import on August 5, 1909, and that the tender of entry was made in fact on August 6, 1909. The horses were rightly held dutiable as of that date under the act in force that day.—*Van Treese v. U. S.* (Ct. Cust. Appls.), T. D. 32036; (G. A. Ab. 23890) T. D. 30879 affirmed.

Entries of Merchandise After 4.30 p. m.

ARTICLES 1389 AND 1390, CUSTOMS REGULATIONS OF 1908, VALID.—Articles 1389 and 1390 of the Customs Regulations of 1908, prescribing the hours of business and the hours of service for customs officers, are reasonable regulations for official business at the customhouse, and as such have the force of law. The extension of such hours beyond the time prescribed rests with the Secretary of the Treasury as a matter within his discretion.

ENTRY OFFERED AFTER 4.30 P. M. PROPERLY REFUSED.—Where an importer appears at the customhouse and seeks to make entry of imported merchandise after the hour of 4.30 p. m., which is named as the proper time for terminating official business, and the collector refuses to admit him to his office, and he is thereby prevented from making entry, he has no legal redress.—T. D. 30891 (G. A. 7090).

Section 29, Act of 1909, Construed.—The phrase "under bond for warehousing, transportation, or any other purpose" in section 29 of the act of 1909 embraces within its meaning all merchandise still in the custody of the Government and, as the law expressly states, "for which no permit of delivery to the importer or his agent has been issued." *Hartranft v. Oliver* (125 U. S., 525) followed.

The duty provided by the tariff act in force at the time duty was paid and permit of delivery issued is the duty applicable to imported merchandise. Merchandise entered while the tariff act of 1897 was in force, but on which duty was not paid and permit of delivery issued until after the act of 1909 became effective, is, under the terms of section 29, dutiable under the tariff act of 1909. *Cordero's case*, G. A. 6945 (T. D. 30161), distinguished.—T. D. 30443 (G. A. 6994).

Reappraisal of Merchandise in Bonded Warehouse.—Merchandise appraised prior to August 6, 1909, not subject to reappraisal under subsection 11 of section 28 act of August 5, 1909. The provision of section 29, act of August 5, 1909, that merchandise in warehouse "shall be subject to duties imposed by this act," refers only to the rate of duty and not to the value of the goods.—Dept. Order (T. D. 29999).

Immediate-Transportation Entry.—This is a protest against the payment of duty under the act of 1909 on certain hosiery which arrived in New York on July 26, 1909, was there entered for immediate transportation in bond to Los Angeles, and was entered at Los Angeles August 13.

In *Ellison v. U. S.* (142 Fed. Rep., 732; T. D. 27035) it was held that certain merchandise which was entered at New York for immediate transportation to Philadelphia, before the law of 1897 took effect, but did not arrive in the latter city until after that time, was dutiable under the new law. Following that decision this protest is overruled.—Ab. 22295.

New Treasury Regulations and Goods in Bond.—The regulations of the Secretary of the Treasury duly promulgated, requiring an importer who desires to obtain the benefit of paragraph 717, tariff act of 1909, to file at the time he makes entry of his merchandise certain affidavits, is a requirement applying to merchandise in a bonded warehouse at the time the act of 1909 went into effect; and as to merchandise of this description the regulations will be taken to refer to the time when the necessary steps were taken to withdraw the goods from bond, duty ascertained and liquidated, a delivery permit issued; and not to a later time.—*Gump Co. v. U. S.* (Ct. Cust. Appls.), T. D. 32384; (G. A. 7264) T. D. 31812 affirmed.

Antiques in Bond—Compliance with Treasury Regulations.—The regulation of the Secretary of the Treasury (T. D. 29958) relating to antiques is reasonable and must be complied with to entitle merchandise to free entry under paragraph 717, tariff act of 1909, where the goods were entered for warehousing prior to August 5, 1909, and withdrawn after said regulation was promulgated.—T. D. 31812 (G. A. 7264).

Entry Presented After Office Hours.

REFUSAL OF ENTRY.—The tariff act of 1909 was signed at 5.05 p. m. on August 5, and went into effect the next day. Business hours at customhouses, by virtue of reasonable departmental regulations then in force, ended at 4.30 p. m. At that hour certain importations had not arrived within a collector's jurisdiction. *Held*, under these circumstances a tender and payment of duty under the provisions of the act of 1897, made a few minutes after 4 o'clock, was properly refused for the reason that the importation was not within the jurisdiction and the collector was not bound to keep his office open beyond the regular hour for closing for the purpose of permitting an entry to be made later that day.

OFFICE HOURS.—Nothing further appearing, the fact that a new tariff law has been enacted does not of itself create within the meaning of article 1389 of the customs regulations of 1908 an occasion where the "necessities or interests of

the public service" require the ordinary business hours of customhouses to be prolonged.

CONSTITUTIONAL RIGHTS.—The fact that a collector at another port voluntarily kept his office open and received entries after the close of regular business hours of August 5 does not lay the foundation for the claim of an unlawful invasion of the constitutional rights of an importer under sections 8 and 9 of Article I of the Constitution of the United States.—*Talbot v. U. S. (Ct. Cust. Appls.)*, T. D. 31483; (G. A. 7089) T. D. 30890 affirmed.

Law Applicable Determined by Time of Entry and Payment of Duty.

DATE OF EFFECT OF TARIFF ACT OF 1909.—The tariff act of 1909 became effective on August 6 of that year. *Held*, that merchandise which arrived within the limits of the port of New York on the night of August 5, and for which entry was made on August 6, is dutiable under the act of 1909, in accordance with section 29 thereof.

HOURS OF BUSINESS, EXTENSION OF.—Article 1389, Customs Regulations of 1908, requires that customs offices shall be kept open on all business days from 9 a. m. to 4.30 p. m., and provides further that "these hours are to be prolonged when the necessities or interest of the public service require it." *Held*, that the matter of determining when the necessities or interests of the public service require such extension of hours is for the sound discretion and business judgment of the Government officials, and that no such necessity existed from the mere anticipation of the arrival of a vessel which had not entered the port at the regular closing hour.—T. D. 30890 (G. A. 7089).

Delivery Permit—Part Designated for Examination.—The goods had been entered for consumption, 10 per cent of them designated for examination, a proper bond for the return of the delivered goods executed, a delivery permit as to those issued, all on August 5, 1909. On August 6 a delivery permit was issued for the goods designated and detained for examination: *Held*, the entire importation was dutiable under paragraph 250, tariff act of 1897.—*U. S. v. Grossfeld (Ct. Cust. Appls.)*, T. D. 31218; (G. A. Ab. 23263) T. D. 30601 reversed.

Entry Sought to Be Made After Office Hours.—In June, 1909, certain liquors were withdrawn from warehouse at the port of New York, transported to Chicago, and entered for warehouse there July 29 following. On August 5 following, at about 5.30 o'clock p. m., the owners sought to withdraw these liquors, paying duty as of that date. *Held*, the collector properly refused the duties so tendered after office hours and properly, on August 6 ensuing, assessed the duties under the tariff act, August 5, 1909, effective that day.—*Gallagher & Ascher v. U. S. (Ct. Cust. Appls.)*, T. D. 31034; Ab. 23266 affirmed.

DECISIONS UNDER THE ACT OF 1897.

Dutiable Weight on Withdrawal.

DUTIABLE WEIGHT—TOBACCO WITHDRAWN FROM WAREHOUSE.—Under section 33, tariff act of 1897, warehoused merchandise dutiable by weight should be assessed according to its weight at the time of entry and not of withdrawal from warehouse.

GOODS WITHDRAWN FROM WAREHOUSE.—Section 20, customs administrative act of 1890, as amended by the act of December 15, 1902 (T. D. 24109), wherein it is provided as to merchandise withdrawn from bonded warehouse that "the same rate of duty shall be imposed thereon as may be imposed by law upon like articles imported at the time of withdrawal," refers to rate of duty rather than to the weight of the merchandise.

CONSTRUCTION OF PROVISIO.—Section 33, tariff act of 1897, relating to "merchandise previously imported for which no entry has been made" or "previously entered without payment of duty," contains a proviso that the duties on warehoused goods dutiable by weight shall be based upon weight of the goods at the time of entry. *Held*, that the proviso is not restricted to the matter immediately preceding it, relating to goods imported prior to the passage of the act, but was intended to be general and includes as well merchandise imported after the passage of the act.

CUSTOMS PRACTICE—CONGRESSIONAL RECOGNITION.—In enacting section 33, tariff act of 1897, containing a proviso substantially like the proviso in the corresponding section (50) of the tariff act of 1890, Congress intended the former proviso to have the same general scope as the latter, as construed by the Attorney General and applied by the administrative officers of the Government up to the time of the enactment of the law of 1897.

MOISTURE ABSORBED IN TRANSIT—"IMPURITY."—Moisture absorbed by tobacco on an ocean voyage can not be said to be an impurity within the meaning of the decision of the Supreme Court in *Seeberger v. Wright & Lawther Co.* (157 U. S., 183), relating to impurities in flaxseed.

DUTIABILITY.—Moisture absorbed by tobacco on an ocean voyage can not be considered as an independent nontaxable substance, though its amount can be estimated. The statutes contemplate and apply to merchandise which may be changed in weight.—*U. S. v. Falk* (U. S.), T. D. 27832; T. D. 27036 (C. C. A.) reversed; T. D. 25976 (C. C.) and (G. A. Ab. 1616) T. D. 25337 affirmed.

PROTEST ON WITHDRAWAL—TIMELINESS.—Where on the withdrawal of merchandise from bonded warehouse the collector refuses the importer's claim for abatement of duty to which he is entitled on account of shrinkage in weight of the merchandise while in warehouse, such refusal constitutes a liquidation within 10 days of which a protest may be filed by the importer, in the manner prescribed by section 14, customs administrative act of June 10, 1890. A protest filed within 10 days after the original liquidation, while the merchandise is yet in warehouse, is premature and invalid.

ALLOWANCE FOR LOSS.—The prohibition in section 2983, Revised Statutes, of any abatement of duties for any "injury, damage, deterioration, loss, or leakage" sustained by merchandise in warehouse, refers only to actual reduction in the value or quantity of the merchandise itself. Shrinkage in weight through evaporation is not included in the term "loss."

DUTIABLE WEIGHT.—Section 33, tariff act of 1897, provides that when duties are based upon the weight of merchandise in warehouse they shall be levied "upon the weight of such merchandise at the time of its entry;" and section 20, customs administrative act of 1890, as amended by the act of December 15, 1902 (32 Stat., 753; T. D. 24109), provides that on merchandise withdrawn from warehouse "the same rate of duty shall be collected thereon as may be imposed by law upon like articles of merchandise imported at the time of the withdrawal." *Held*, that the assessment of duties on merchandise withdrawn from warehouse should be based on its weight at the time of withdrawal.

LIABILITY TO DUTY.—The general rule is that revenue can be collected only upon the quantity or weight of the taxable subject matter actually imported and received by the importer, so as to come into the consumption of the country.

IMPORTATION.—An importation is not complete while the goods remain in the custody of the officers of the customs.

LIQUIDATION.—The liquidation of duty on imported merchandise is not necessarily final until after the goods have been delivered to the importer.—*American Cigar Co. v. U. S.* (C. C. A.), T. D. 27036; reversed by T. D. 27832 (U. S.).

TOBACCO WITHDRAWN FROM WAREHOUSE.—Under section 33, tariff act of 1897, warehoused merchandise dutiable by weight should be assessed according to its weight at the time of entry and not at time of withdrawal from warehouse.

DISTINCTION BETWEEN RATE AND WEIGHT.—Section 20, customs administrative act of 1890, as amended by the act of December 15, 1902 (T. D. 24109), wherein it is provided as to merchandise withdrawn from bonded warehouse that "the same rate of duty shall be imposed thereon as may be imposed by law upon like articles imported at the time of withdrawal," refers to rate of duty rather than to the weight of the merchandise.

CONSTRUCTION OF PROVISIO.—Section 33, tariff act of 1897, relating to "merchandise previously imported for which no entry has been made," or "previously entered without payment of duty," contains a proviso that the duties on warehoused goods dutiable by weight shall be based upon the weight of such goods at the time of entry. *Held*, that the proviso is not restricted to the matter immediately preceding it, relating to goods imported prior to the passage of the act, but was intended to be general, and includes as well merchandise imported after the passage of the act.—T. D. 27933 (G. A. 6545).

Entry, When Premature.

FRACTIONS OF DAY.—To the general rule of law that there are no fractions of a day there is an exception where it is necessary, in order to protect a completed or vested right, to prove the time by shorter measurement.

SECTION 33, ACT OF 1897.—Under the provision in section 33, tariff act of 1897, that the duties imposed under said act should be applied to merchandise imported "on and after the day this act shall go into effect," the word "day" had no other significance than "date" or "time." It meant previous to the moment, rather than the day, when the act took effect.

PERIOD FOR MAKING ENTRY.—In construing section 2785, Revised Statutes, allowing importers 15 days within which to make entry of merchandise, and section 33, tariff act of 1897, providing that "merchandise previously imported, for which no entry has been made," shall be subject to the duties provided in said tariff act, *Held*, that the former section does not have the effect of giving importers 15 days in which to enter under the tariff act preceding that of 1897 merchandise which reached port, but was not entered, while said preceding act was in force.

ENTRY—PREMATURE TENDER.—The whole scheme of the tariff laws and the general statutes regulating collections contemplates that importation shall precede entry; and the collector of customs is under no obligation to accept an entry tendered before the importation of the merchandise which it embraces.

IMPORTATION.—The importation of merchandise is not complete until the vessel carrying it has reached the end of her voyage.

ENTRY—REJECTION OF TENDER.—Certain vessels containing merchandise had arrived and were lying to in Chicago Harbor outside the breakwater when the tariff act of 1897 went into effect. Previous to this arrival, but after the vessels had entered American waters, the importers had tendered entry of the merchandise to the collector of customs under the tariff act about to be superseded. The tender was rejected by the collector on the ground that the arrival of the vessels had not been reported at the barge office, and was not renewed after the vessels had reached the harbor. *Held*, that the collector was justified in rejecting the entries on the ground that the importation was incomplete at the time tender was made; *Held*, also, that no estoppel against the Government arose out of the fact that the collector's action may have been based on improper grounds.—U. S. v. Hartwell Lumber Co. (C. C. A.), T. D. 26826; T. D. 25135 (C. C.) reversed; (G. A. 5365) T. D. 24535 affirmed.

Immediate-Transportation Entry.

RIGHT OF ENTRY.—Certain merchandise was imported at the port of New York and entered for immediate transportation to the port of Philadelphia, and the importers tendered a consumption entry to the collector at the latter port, all before the tariff act of 1897 went into effect; but the merchandise did not come within the authority of the latter collector, but was still under the control of the former, when the act became effective. *Held*, that the tender was properly refused and that, under section 33 of said act, subjecting to the duties of that act goods previously entered for transportation, the merchandise became dutiable under that act.

CONFUSION OF GOODS.—Where an entire importation is assessed with duty under one tariff act, it is insufficient to show that a part may have been dutiable under another act at lower rates of duty, if there is no proof as to the identity of such part. In such case the importation must be treated as a whole.—*Ellison v. U. S. (C. C. A.)*, T. D. 27035; T. D. 26219 (C. C.) and (G. A. 5482) T. D. 24796 affirmed.

When Importation is Complete.

LIABILITY TO CHANGE OF DUTY.—As long as goods remain in the custody of the officers of the Government they are to be deemed in a "bonded warehouse," so as to be affected by any new legislation in relation to duties which Congress may adopt. *Hartman v. Oliver* (125 U. S., 525; 8 Sup. Ct. Rep., 958) followed.

WHEN IMPORTATION IS COMPLETE.—When the Government ceases to exercise control over imported merchandise, and delivers it over to the importer, the act of importation is complete; and the rights of both the Government and the importer become fixed and determined, and will be unaffected by a change in the rate of duties.

ISSUANCE OF PERMIT OF DELIVERY.—The issuance of a permit for delivery to the merchant of his imported goods, whereby he is enabled to withdraw them without further permission of the officers of the customs, is, in legal effect, a constructive delivery of the merchandise, and brings the custody of the Government to an end. A change in the rate of duties occurring thereafter will not affect such merchandise.

UNAUTHORIZED ISSUANCE OF COASTING LICENSE.—It seems that if a collector of customs, without authority of law, grants a coasting license to a schooner to proceed to another port of entry, and the vessel so proceeds and discharges her cargo, the act of thus making an illegal voyage does not affect the dutiability of the cargo.—T. D. 23317 (G. A. 5004).

Entry.—The provision in section 2785, Revised Statutes, for the entry of merchandise within 15 days after the report to the collector of the district of the master of the vessel in which the merchandise is imported, fixes the date after which the importer may not make his entry, but not the date before which he may not do so. Accordingly, where importers on and prior to 4.06 p. m. of July 24, 1897, tendered the collector a consumption entry and were prepared to pay the estimated duties on merchandise on a vessel which arrived within the limits of the port that morning, the merchandise is dutiable under the tariff act of 1894. *U. S. v. Legg (C. C. A., 2d cir.)*, overruling *In re Legg (G. A. 4436)*, followed.—T. D. 22870 (G. A. 4881).

Right of Protest on Withdrawal from Bonded Warehouse.

CHANGE IN RATE OF DUTIES WHILE GOODS ARE IN BOND.—When a change in the rate of duties occurs while goods are in bond, the law requires the collector, of his own motion, to reliquidate all entries on the basis of the new rates. He may do this at or before the time of withdrawal of the goods from bond. *Merritt v. Cameron* (137 U. S., 542; 11 Sup. Ct. Rep., 174) followed.

GOODS IN BOND—IMPORTATION NOT COMPLETE.—So long as goods remain in the custody of the officers of the Government their importation is not deemed complete, and they are subject to any duties which Congress may impose. *U. S. v. Benzon* (2 Cliff., 512; 24 Fed. Cas., 1113) followed.—T. D. 22805 (G. A. 4865).

Informal Entry—Conditional Delivery.—The tender by an importer of the formal document prescribed by section 2859 of the Revised Statutes, accompanied by a check in payment of duties, does not constitute the "entry" of merchandise as the term is used in section 33, tariff act of July 24, 1897. *T. D. 22481* (G. A. 4762) cited and followed.

The instrument characterized by the law and known in customs transactions as "permit of delivery" or "permit to deliver" may be, and frequently is, when issued, conditional in effect. These conditions may rest in parol or custom or be a part of the instrument, or may be such as are prescribed as statutory or administrative conditions or regulations affecting such instruments generally or in the particular case. *U. S. v. Goodsell* (84 Fed. Rep., 439).

Where importers on and prior to 4.06 p. m. of July 24, 1897, tendered the collector the informal documentary entry of and a check in payment of estimated duties on cargoes of lead ores imported in bond, and which had only arrived at the port that morning, which said goods were on subsequent days officially and duly weighed and assayed and duties thereupon liquidated, even had said documents been accepted, such goods fall within the provisions of section 33 of said act, as goods "for which no entry has been made," and "for which no permit of delivery has been issued," and becomes subject to the provisions of the tariff act of July 24, 1897.—*T. D. 22618* (G. A. 4809).

The mere filing of the prescribed document with the collector is not an "entry." It is necessary that the collector should accept and act upon it. "Entry" may be described as the entire transaction by which the importer obtains the entrance of his goods into the body of the merchandise of the United States, and is not completed until the right to the custody of the goods passes from the Government. *U. S. v. Cargo of Sugar* (3 Sawyer, 46; 25 Fed. Cases, 288); *U. S. v. Baker* (5 Ben., 251; 24 Fed. Cases, 953); *U. S. v. Goodsell* (84 Fed. Rep., 439); *U. S. v. Benzon* (2 Cliff., 512; 24 Fed. Cases, 1112).

The informal entry, so called, provided by section 2859, Revised Statutes, is designed as a rule of convenience only and is not intended to contribute to the rights of importers. The simple filing of the application to enter merchandise under its provisions does not vest in the importers, at the time of such filing, even an incipient right or equity, such as a court would intervene to protect. Before such entry can be regarded as complete, the collector must be satisfied that the neglect to produce a certified invoice was unintentional and that the importation was made in good faith.

Where importers on and prior to July 24, 1897, made application to enter goods without invoice, but the goods were not finally passed nor the duties paid nor permits of delivery granted until after July 24, such goods fall within the provisions of section 33, act of July 24, 1897, as goods "for which no entry has been made," and become dutiable at the rates provided by said act and not at those prescribed by the act of 1894.—*T. D. 22481* (G. A. 4762).

Withdrawals from Warehouses Under Reciprocity Treaties.—Goods imported before but withdrawn from warehouse after a treaty under section 4, act of 1897, becomes operative will be subject to treaty duties.—Dept. Order (*T. D. 21866*).

Ores.—Lear-bearing ores, imported and entered for warehousing at a bonded smelter, prior to the passage of the tariff act of July 24, 1897, but remaining within the custody of Government officers at said smelter at the time said act

took effect, are dutiable under its provisions, and not under those of the act of August 28, 1894. For goods to be dutiable under the latter act they must have been either imported and entered for consumption or withdrawn for consumption and removed from Government custody while said act was in effect. *U. S. v. Goodsell* (84 Fed. Rep., 439) applied; *In re Kitz* (G. A. 4356).—T. D. 20801 (G. A. 4373).

Weight of Tobacco.—Merchandise withdrawn from warehouse after July 24, 1897, is subject to duty on the basis of the weights ascertained at the time of entry and not at the time of withdrawal. Section 50 of the tariff act of 1890 was repealed by section 33 of the tariff act of 1897.—T. D. 19715 (G. A. 4214).

Entry.—Importations of goods made at an original port of entry, and duly entered for consumption prior to 4.06 o'clock p. m. (Washington time), July 24, 1897, are dutiable under the tariff act of 1894. But where goods arrived prior to said hour, but were not entered, and the duties thereon were not paid until afterwards, or where goods arrived at any original port of entry prior to said hour, and were entered under bond for warehousing, transportation, etc. (without payment of duties and issue of permit of delivery), they are dutiable under the tariff act of 1897.

The "entry" referred to in section 33 of the tariff act of 1897 is the entry of the merchandise, and not the entry of the vessel. *In re Gardiner* (53 Fed. Rep., 1013), *In re Sheldon* (G. A. 260), and *In re Knox* (G. A. 262) followed.—T. D. 18635 (G. A. 4033).

Free Goods.—Furniture which was free under paragraph 426 (1894) as antiquities is not dutiable when imported at 1 o'clock in the afternoon of July 24, 1897. This section has no application to free goods. Reversing board.—*Pitt v. U. S.*, 99 Fed. Rep., 558.

DECISIONS UNDER THE ACT OF 1894.

Change of Tariff Acts—Merchandise in Warehouse.—Under the provision in the enacting clause of the tariff act of 1894, that the rates prescribed in said act shall be applicable to "all articles withdrawn for consumption," *Held*, that merchandise imported and entered for warehouse before, but withdrawn for consumption after, that act went into effect was subject to the duty provided by said act.

The merchandise in question was imported and entered for warehouse under the tariff act of 1890, and the duties had been paid while that act was still in force; but the merchandise still remained in the custody of the collector of customs when the tariff act of 1894 went into effect. The collector was of opinion that the date of payment of the duties, and not of delivery of the merchandise to the importers, determined whether the latter act should apply. This contention was overruled by the board in a decision rendered December 2, 1903.—*U. S. v. Amsinck* (C. C.), T. D. 26420.

Lemons on Wharf at Time of Passage of Act.—An importation of lemons was entered a few days before the passage of the act of 1894, and, according to the custom and rules of administration of the port, were designated for examination on the wharf. On August 29 the goods were examined there, having remained in custody up to that time, and were then sold by the importers. *Held*, that under this section imposing duty upon all merchandise "imported from foreign countries or withdrawn for consumption" they were dutiable under the new law.—*U. S. v. E. L. Goodsell Co.* (C. C.), 78 Fed. Rep., 806; (C. C. A.) 84 Fed. Rep., 439 affirmed.

Custody of the Government.—Where goods were entered on August 27, 1894, but were in custody of the Government on August 28, they must be treated

as imported on the 28th, and are dutiable under the act of 1894.—*Oppenheimer v. U. S. (C. C.)*, 90 Fed. Rep., 796.

DECISIONS UNDER THE ACT OF 1890.

Act of October 1, 1890.—Merchandise arriving prior to October 6, 1890, but for which no entry had been made, was held dutiable under the act of 1890 as provided for in section 50.—*T. D. 10479 (G. A. 129)*; *T. D. 10678 (G. A. 262)*.

Goods in General Order Warehouse October 6, 1890, and entered October 7 are dutiable under the act of 1890.—*T. D. 10554 (G. A. 204)*.

Merchandise in Warehouse Prior to October 1, 1890.—Jute butts imported and warehoused prior to October 1, 1890, and withdrawn October 6 are free under the act of 1890 and not dutiable under the act of 1883.—*T. D. 10413 (G. A. 104)*.

Weight of Goods in Warehouse Over Three Years.—Weight of tobacco at the time of importation taken as the dutiable weight, where the tobacco having remained in warehouse more than three years was delivered to the importers upon payment of duties and charges.—*T. D. 18413 (G. A. 3970)*.

No Allowance for Moisture in Weight Under Section 50.—Tobacco imported and an allowance of 8 per cent made on original liquidation on account of moisture. On final withdrawal, claim made that duty should be assessed on the weight at the time of withdrawal. *Held*, that the collector was right in refusing to grant the second claim.—*T. D. 14383 (G. A. 2267)*.

Withdrawals from Rewarehouse—Dutiable Weight of.—Tobacco imported at New York, entered in bond, taken to Boston under transportation entries, re-warehoused by being actually deposited in bonded warehouse at Boston, and afterwards withdrawn for consumption. The dutiable weight is the weight at the time of withdrawal.—*T. D. 13055 (G. A. 1560)*.

Dutiable Weight—Merchandise Withdrawn for Transportation.—Where tobacco was entered at New York, warehoused, and withdrawn for transportation in bond to an interior port, not actually rewarehoused at interior port, but constructively rewarehoused and withdrawn for consumption, duty must be assessed on the weight at the port of original entry. Section 50, act of 1890, does not refer to goods constructively rewarehoused.—*T. D. 11695 (G. A. 800)*; *T. D. 12384 (G. A. 1156)*.

Leaf Tobacco in Bonded Warehouse.—Tobacco imported February 13, 1890, transported in bond and deposited in bonded warehouse October 21, 1890, and withdrawn for consumption May 4, 1891. Under R. S. 2970 additional duty of 10 per cent was assessed. *Held*, that when the act of June 10, 1890, section 26, became operative, the additional duty had not accrued, and that as the tobacco was withdrawn for consumption within three years it is not subject to additional duty or to assessment according to original entry, but is dutiable according to weight at the time of withdrawal.—*T. D. 11836 (G. A. 827)*.

Dutiable Weight of Tobacco Withdrawn from Warehouse.—Leaf tobacco imported in December, 1889, and withdrawn October 17, 1890, when duty was paid under the act of 1883. *Held*, that it is subject to duty on weight at the time of withdrawal.—*T. D. 10955 (G. A. 450)*.

Custody of the Government.—Carpet wool imported and duties paid prior to August 28, 1894. Permit to withdraw given under article 497, regulation 1892, which permit was presented to the storekeeper prior to August 28, but the goods not actually delivered to the importer, being voluntarily left by him until

after that date. *Held*, dutiable under the act of 1890.—T. D. 16649 (G. A. 3294).

Custody of Government—Effect of Delivery Permit.—Goods entered August 23, 1894, and permit to land and deliver goods issued August 23, which permit dispensed with the necessity of removing the goods to the public stores. Goods examined August 29, 1894, and permit indorsed, "Examined, Aug. 29, 1894. C. L. L." During the period between August 23 and August 29, the goods were either actually or constructively in the custody of the customs officers and not under control of the owners on August 28, when the act of 1894 went into effect, and are therefore dutiable under the act of 1894 and not the act of 1890.—T. D. 16404 (G. A. 3193).

Rate of Duty on Goods Over Three Years in Bond.—Decorated earthenware imported and warehoused October 6, 1892, and withdrawn October 14, 1895, more than three years after being in bond. *Held*, dutiable under the act of 1890.—T. D. 18223 (G. A. 3933).

California Exposition.—Goods imported while the act of 1890 was in force to be exhibited at the California Midwinter Exposition and withdrawn for consumption and sold after the act of 1894 went into effect. *Held*, that section 2 of the act authorizing the sale of merchandise imported for the purpose of exhibition, providing that all such articles shall be subject to duty, if any, imposed by the revenue laws in force at the date of importation being a special act designed to govern a particular class of merchandise, is not repealed or modified by the more general legislation of the act of 1894.—T. D. 16357 (G. A. 3186).

Withdrawals of Sugar from Warehouse.—The importer claimed the sugar to be dutiable on the weight when withdrawn from the warehouse, not upon the weight when entered. *Held* (1) that section 50 of the act of October 1, 1890, is not repealed by the act of 1894; (2) that the phrase "duties based upon the weight of merchandise" does not describe goods which pay an ad valorem duty based upon the value of the goods in a foreign country and not upon the weight in the United States.—T. D. 16110 (G. A. 3074).

Sunday Closing of Customhouse.—Vessel arrived in port prior to October 6, 1890, but the goods were not entered for consumption until after that date, in the form prescribed by law (R. S. 2785; R. S. 2786). *Held* dutiable under the act of 1890. There is no legal force in the objection that the collector closed the customhouse on Sunday, October 5, 1890, and refused to make entries on that day.—T. D. 13978 (G. A. 2083).

Immediate-Transportation Goods.—Goods entered for immediate transportation, without appraisement, before the act of October 1, 1890, went into effect, but entered for consumption after it went into effect, held dutiable under the act of 1890.—T. D. 12260 (G. A. 1074).

Tin, Under Immediate Transportation on July 1, 1891.—Section 50, act of 1890, refers to goods declared to be dutiable as of the date when this law went into effect (Oct. 6, 1890). It does not embrace articles upon which duty was levied to take effect on any other day than October 6, as, for instance, tin under paragraphs 143 and 145.—T. D. 12007 (G. A. 920).

Goods Entered for Consumption Prior to Act October 1, 1890.—Section 50, act of 1890, applies to goods under bond, whether for warehouse, transportation, or any other purpose, and does not apply to goods entered for consumption under R. S. 2785, which is a final entry.—T. D. 11565 (G. A. 740).

Immediate Transportation Entered.—Cigars entered at New York for immediate transportation in September, 1890, and arrived at Denver on Octo-

ber 2 and 3, when the surveyor mailed notices of their arrival to the importer who did not receive such notices until October 6, when the new tariff was in force. *Held*, that the surveyor was not bound to give notice to the importer of the arrival of his goods, and that the cigars are dutiable under the act of 1890.—T. D. 11039 (G. A. 482).

Dutiable Gauge of Merchandise Withdrawn from Warehouse.—The dutiable gauge of whisky is that at the time it is placed in the warehouse and not at the time of withdrawal. The term "weight" in section 50, act of 1890, can not be construed to mean gauge.—T. D. 10747 (G. A. 300).

Goods Arrived Prior to October 1, but which were not Entered for Warehouse Prior to that Date.—Entry under R. S. 2785, prepared September 30, 1890, and handed to deputy collector, but not verified until October. Entry was for warehouse only and not for transportation. *Held* dutiable under the act of 1890.—T. D. 10676 (G. A. 260).

Merchandise in Warehouse Over Three Years.—Steel rails imported and placed under bond, the warehouse entries being liquidated under paragraph 147, act of 1883. They remained in the warehouse over three years and became liable to be regarded as abandoned under R. S. 2971. Sale was postponed by the Secretary at the request of the importers, and in the meantime the tariff acts of 1890 and 1894 were passed. The importer offered to withdraw the rails and pay the duty provided by the act of 1894, claiming that the duty payable on withdrawal had been reduced by the act of 1890 and the act of 1894, and that R. S. 2971 had been repealed. *Held*, that said section was not repealed or modified by the act of June 10, 1890, section 29, or by the act of October 1, 1890, sections 54 and 55, or by the act of 1894, section 72; that the right to sell the rails for duties, etc., due was "an accrued right" within the saving clause of such acts; and that the goods were liable for the duties provided by the act of 1883, in force at the time of their abandonment.—*Anglo-California Bank v. Secretary of Treasury*, 76 Fed. Rep., 742; 71 Fed. Rep., 505, affirmed; T. D. 16090 (G. A. 3054) reversed.

Merchandise Unentered at Time of Passage of Act.—Goods arrived in port October 4, 1890, but not entered until October 6, 1890. They pay the duty prescribed by the act of October 1, 1890. The date when this act went into effect for duty purposes was October 6, 1890. Reversing the circuit court and sustaining the board of appraisers.

The words "no other duty," in section 50, act of 1890, mean "the same duty."—*In re Gardiner* (C. C. A.), 53 Fed. Rep., 1013.

Duties Under Section 2970.—R. S. 2970 is repealed by section 50, act of October 1, 1890, and additional duty can not be levied on goods which had been in bond more than a year before the date when this act went into effect and were withdrawn in January, 1891.—T. D. 10354 (G. A. 75); T. D. 10466 (G. A. 116); reversed *In re Schmid* (C. C.), 54 Fed. Rep., 145.

Goods deposited in bond prior to the date of the act of October 1, 1890, for which no permit of delivery has issued, and withdrawn before February 1, 1891, but after act of 1890 went into effect, are not subject to the additional duty provided by section 2970.—*U. S. v. McGrath* (D. C.), 50 Fed. Rep., 404.

Gaugeable Goods—Duty on Quantity at Time of Importation.—Section 50 of the act of 1890 declares that any merchandise deposited in bond before the date of the act may be withdrawn for consumption on payment of the duties in force before the act, and that when such duties are based upon the weight of the goods, the weight shall be taken at the time of withdrawal. *Held*, that while under the internal-revenue laws the proof of spirits is determined

by weight, yet the tax is always assessed upon the gallon measurement, whether the spirits are above or below proof, and hence reimported whisky, when withdrawn from bond, may pay according to the number of gallons at the time of importation and not at the time of withdrawal.—*Louisville Public Warehouse Co. v. Surveyor of the Port at Louisville (C. C.)*, 48 Fed. Rep., 372; affirmed, *Same v. Collector of Customs (C. C. A.)*, 49 id., 561.

DECISIONS UNDER EARLIER STATUTES PERTAINING TO SAME SUBJECT MATTER.

Arrival of Vessel at Port of Entry.—The act of July 1, 1812, took effect on the day of its date, and all vessels arriving at their port of entry and discharge on that day were liable to pay the duties, although they had actually arrived before within the jurisdiction of the United States.—*U. S. v. Arnold*, 1 Gall., 348; 24 Fed. Cas., 868.

The vessel arrived at Bristol on June 12, 1812, entered on July 2, and began to discharge her cargo. *Held*, that the duties accrued upon the arrival in port with intent to unlade the cargo there and not upon the entry of the goods at the customhouse. The importation is complete on such arrival. In this case the question was, Were the goods liable to single duties or double duties under the act of July 1, 1812 (2 Stat., 768).—*U. S. v. Lindsey*, 1 Gall., 365; 26 Fed. Cas., 971.

An importation is complete when the goods arrive at the port of entry, and the duties accrue at that time and not at the time of the subsequent entry at the customhouse.

The importer or consignee of imported goods is personally liable for the duties charged thereon.—*U. S. v. Dodge*, 1 Deady, 124; 25 Fed. Cas., 878.

To constitute an importation so as to attach the right to duties, an arrival within the limits of a port of entry is necessary.

Vessel arrived within limits of the United States June 30 and within collection district on July 1; entry made on July 2. Duties attach on arrival within limits of port of entry.

The act of July 1, 1812 (2 Stat., 768), took effect on the day of its passage, and the cargo of a vessel arriving on that day is liable to the additional duty imposed by that act.

It is a general rule that where computation is to be made from an act done the day on which the act is done is to be included.—*Arnold v. U. S.*, 9 Cranch, 104.

Merchandise on Vessel, Not in Warehouse—Act 1883.—Emery stone was dutiable at \$6 per ton on June 30, 1883. Under the act of 1883 it was free on and after July 1, 1883. Emery stone arrived at the port of New York on June 30, 1883, too late to go into store or bonded warehouse on that day. July 1 being Sunday, the stone was entered on July 2. It was claimed this importation was free under this act and that for this purpose the deck of the vessel should be considered a bonded warehouse. *Held*, that the stone was dutiable at \$6 per ton.—*McAndrew v. Robertson*, 29 Fed. Rep., 246. Note reversal in 125 U. S., 525, *infra*.

Brandy Abandoned in Warehouse—Act of December 1, 1869.—On December 1, 1866, a warehouse bond was given for the payment of the duties then existing or to be thereafter enacted on certain brandy. The condition of the bond was that the obligors should after the expiration of one year and before the expiration of three years from the date of the bond withdraw the brandy and pay the amount of the penalty of the bond or the true amount, when ascer-

tained, of duties imposed on the brandy and an additional sum equal to 10 per cent of the said duties. From a date prior to December 1, 1869, until January 1, 1871, the duty on brandy was \$3 per gallon. By section 21 of the act of July 14, 1870, which went into effect January 1, 1871, the duty was reduced to \$2 per gallon. After January 1, 1871, the brandy was sold at auction by the United States for the nonpayment of duties and a suit was brought on the bond to recover the amount of duties due beyond the proceeds of the sale. *Held*, that the proper rate of duty was the rate imposed at the expiration of three years from the date of the bond, namely, December 1, 1869, which was \$3 per proof gallon and an additional duty equal to 10 per cent thereof, and not \$2 per gallon under the act of 1870.—*U. S. v. Duvivier*, 12 Blatch., 449; 25 Fed. Cas., 969.

Merchandise on Vessel in Custody of Government—Act of 1883.—A vessel arrived at a port of the United States from a foreign port on June 30, 1883, and was entered at the customhouse on that day. A customhouse inspector took charge of it, and the vessel remained with unbroken hatches until after the following July 1. *Held*, that the goods on board, being in the custody and under the control of the officers of the customs, were “in a public store” or “bonded warehouse” within the meaning of section 10, act of 1883, and were subject to the duty imposed by the act of 1883.—*Hartranft v. Oliver*, 125 U. S., 525.

Date of Original Importation—Section 2970, Revised Statutes.—Goods were imported by way of New York, from whence they were transported in bond to Chicago. Within one year from their arrival at Chicago, but more than a year from their arrival at New York, the importer offered to pay the duties and charges, but the collector assessed an additional duty of 10 per cent. *Held*, that the words “date of original importation” mean the date of the arrival of the goods at the port of destination. This case overruled in 153 U. S., 609.—*Farwell v. Spalding*, 24 Fed. Rep., 18, *infra*.

The words “date of original importation” used in R. S. 2970 refer to the exterior port of first arrival of the merchandise and not to the interior port of destination.—*Seeberger v. Schweyer*, 153 U. S., 609.

Distilled Spirits—Act of March 7, 1864.—Under the act of March 7, 1864 (13 Stat., 16), an additional duty of 40 cents a gallon was imposed on all distilled spirits imported from foreign countries prior to the passage of that act.

The fact that such spirits were in a bonded warehouse at the time of the passage of the act does not exempt them from such tax.

The Secretary has power to direct the additional duty to be paid to a collector of internal revenue.—*Westfall v. Shook*, 5 Blatch., 383; 5 Int. Rev. Rec., 54; 29 Fed. Cas., 795.

Duties Under Section 10, Act of 1883.—The intention of section 10, act of 1883, is that all goods remaining in bonded warehouses on July 1, 1883, entitled to be withdrawn under R. S. 2971, 2972, should be subject to no higher duties than this act imposes.—*Abbott & Co. v. U. S.*, 20 Cl. Cls. R., 280.

Goods in Warehouse Over One Year—Act of March 14, 1866.—The 10 per cent additional duty imposed by the act of March 14, 1866 (14 Stat., 8), on goods withdrawn from the warehouse after one year from their importation, is also to be assessed upon goods never withdrawn but sold to satisfy duties.—*U. S. v. Unger*, 18 Int. Rev. Rec., 164; 28 Fed. Cas., 332.

Certain goods were imported in November, 1869, and stored in a bonded warehouse until March 20, 1871, when they were withdrawn for consumption. *Held*, that having so remained in such warehouse they were, under the act of 1866, subject to the additional duty of 10 per cent.—*Fabbri v. Murphy*, 95 U. S., 191.

Importation Defined.—There is [1816] no statute of the United States nor principle of law which requires an entry to be made in order to render an importation complete.

The arrival of a vessel at her port of destination with intent to land her cargo constitutes an importation.

Vessel arrived at the port of Philadelphia June 16, 1812, and an application was immediately made for an entry. On June 26, 1812, the vessel and cargo was seized for a violation of the nonimportation act. On March 20, 1813, the forfeiture was remitted by the Secretary. The goods are not liable to double duty under the act of July 1, 1812.—*Perots v. U. S.*, 1 Pet. C. C., 256; 19 Fed. Cas., 258.

Tea—Act of June 30, 1864.—Tea arrived in port at 9 o'clock p. m., April 29, 1864. Entry, invoice, and bill of lading presented to the collector at 2 o'clock, April 30, and 20 cents per pound tendered as the duty under the act of December 24, 1861. *Held*, that under the joint resolution of April 29, 1864, and section 20, act of June 30, 1864, the duty was 30 cents per pound.

Under section 19, act of June 30, 1864 (13 Stat., 202), all teas in warehouse on July 1, 1864, were subject to a duty of 25 cents per pound when afterwards withdrawn for consumption.

Section 20 of the act of June 30, 1864, did not have a retroactive effect. Its intention was to equalize the joint resolution of April 29, 1864, as between two classes of persons—those whose goods, owing to a failure to enforce the resolution until a late hour on April 30, 1864, had gone into consumption upon payment of the former rates of duty, and those who on later hours of the same day had been compelled to pay the extra duty of 50 per cent upon similar entries—but it made no provision for those who, although their goods arrived on April 29 or 30, did not on those days enter them for consumption.—*Smith v. Draper*, 5 Blatch., 238; 2 Int. Rev. Rec., 6; 22 Fed. Cas., 523.

Vessel Bound to United States—Act of August 5, 1861.—A person purchased sugars in a foreign port and expressed an intention of shipping them to the United States, and the charter party was for a voyage to a certain foreign port for a cargo, thence to New York or Boston, as ordered. Before the ship sailed from the port at which she was lying a stipulation was added to the charter party, giving the charterers the option of sending the vessel to Falmouth for orders to discharge at one of the several enumerated foreign ports. Before the departure of the ship the purchaser notified the parties through whom the purchase was made that the vessel would not go to America. The bill of lading and all the papers were made out to send the vessel to Falmouth for orders, and the goods were consigned to Hamburg. When the ship arrived at Falmouth the purchaser ordered her to proceed to Boston, where she arrived January 22, 1862. *Held*, that the goods were not on August 5, 1861, while the ship was on the voyage to Falmouth, bound to the United States, and the cargo was dutiable under the act of August 5, 1861.—*Gossler v. Goodrich*, 3 Cliff., 71; 10 Fed. Cas., 836.

Warehouse Goods—Act of August 5, 1861.—Under the act of August 5, 1861, section 5 (12 Stat., 292), the importer could withdraw his goods from the warehouse within three months from the time of depositing them there; but by this section the period was changed to three months from the date of the original importation. *Held*, that this act in its application to a case of this nature was operative and constitutional.

The plaintiff prior to July 14, 1862, made certain importations into the United States and warehoused the same. Upon these importations the duties were ascertained according to the existing act of August 5, 1861, which was in force

at the time of the importations. The goods were withdrawn for consumption after August 1, 1862, and after the act of July 14, 1862, took effect, each withdrawal having been made more than three months from the date of importation, but less than three months from the date of the deposit in the warehouse. *Held*, that the importations were subject to the duties prescribed by this act.

The provisions of the act of 1861, relative to the time in which the importations might be withdrawn from the warehouse, are not to be considered a contract between the importer and the Government, but a regulation of a privilege granted by the Government, which privilege the Government may entirely withhold. Similar changes have frequently been made upon this subject.

The importation of goods, as between the importer and the Government, is not complete as long as the goods remain in the custody of the officers of the customs; and until they are delivered to the importer, whether on shipboard or in warehouse, they are subject to any duties on imports which Congress may see fit to impose and to new legislation as well in relation to duties as to alteration in warehouse laws.—U. S. v. Benzon, 2 Cliff., 512; 24 Fed. Cas., 1112.

1913 **R.** That the President shall cause to be ascertained each year, the amount of imports and exports of the articles enumerated in the various paragraphs in section one of this Act and cause an estimate to be made of the amount of the domestic production and consumption of said articles, and where it is ascertained that the imports under any paragraph amount to less than 5 per centum of the domestic consumption of the articles enumerated he shall advise the Congress as to the facts and his conclusions by special message, if deemed important in the public interest.

1909 (No corresponding provision.)

1897 (No corresponding provision.)

1894 (No corresponding provision.)

1890 (No corresponding provision.)

1883 (No corresponding provision.)

1913 **S.** That, except as hereinafter provided, sections one to forty-two, both inclusive, of an Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, and all Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed: *Provided*, That nothing in this Act shall be construed to permit any oaths to be demanded or fees to be charged except as provided in this Act or in section twenty-eight hundred and sixty-two of the Revised Statutes of the United States, nor to repeal or in any manner affect the following numbered sections of the aforesaid Act approved August fifth, nineteen hundred and nine, viz: Subsection twenty-nine of section twenty-eight and subsequent laws and amendments relating to the establishment and continuance of a customs court, subsection thirty of section twenty-eight, providing for additional attorneys, subsection twelve of section twenty-eight and subsequent provisions establishing a Board of General Appraisers of merchandise, sections thirty, thirty-one, thirty-two, thirty-three, and thirty-five, imposing an internal revenue tax upon tobacco, section thirty-six, providing for a tonnage duty, section thirty-nine, authorizing the Secretary of the Treasury to borrow on the credit of the United States to defray expenditures on account of the Panama Canal, section forty, authorizing the Secretary of the Treasury to borrow to meet public expenditures: *Provided further*, That all excise taxes upon corporations imposed by section thirty-eight, that have accrued or have been imposed for the year ending December thirty-first, nineteen hundred and twelve, shall be returned, assessed, and collected in the same manner, and under the same provisions, liens, and penalties as if section thirty-eight continued in full force and effect: *And provided further*, That a special excise tax with respect to the carrying on or doing of business, equivalent to 1 per centum upon their entire net income, shall be

levied, assessed, and collected upon corporations, joint stock companies or associations, and insurance companies, of the character described in section thirty-eight of the Act of August fifth, nineteen hundred and nine, for the period from January first to February twenty-eighth, nineteen hundred and thirteen, both dates inclusive, which said tax shall be computed upon one-sixth of the entire net income of said corporations, joint stock companies or associations, and insurance companies, for said year, said net income to be ascertained in accordance with the provisions of subsection G of section two of this Act: *Provided further*, That the provisions of said section thirty-eight of the Act of August fifth, nineteen hundred and nine, relative to the collection of the tax therein imposed shall remain in force for the collection of the excise tax herein provided, but for the year nineteen hundred and thirteen it shall not be necessary to make more than one return and assessment for all the taxes imposed herein upon said corporations, joint stock companies or associations, and insurance companies, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in this Act; but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said repeal or modification; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. Any offenses committed and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted or punished in the same manner and with the same effect as if this Act had not been passed. No Acts of limitation now in force, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this Act shall be affected thereby so far as they affect any suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act, which may be commenced and prosecuted within the same time and with the same effect as if this Act had not been passed.

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SEC. 41. That sections one to four, inclusive, of an Act entitled: "An Act to provide revenue for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, and all Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed, but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said repeal or modification; but all rights and liabilities under said laws shall continue and may be enforced in the same manner, except as otherwise provided in section twenty-eight of this Act, as if said repeal or modifications had not been made. Any offenses committed and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted or punished in the same manner and with the same effect as if this Act had not been passed.

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All acts of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this Act shall not be affected thereby; and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act, may be commenced and prosecuted within the same time and with the same effect, except as otherwise provided in section twenty-eight of this Act, as if this Act had not been passed. That an Act entitled: "An Act to simplify the laws in relation to the collection of the revenues," approved June tenth, eighteen hundred and ninety, as amended by the Act of July twenty-fourth, eighteen hundred and ninety-seven, and as further amended by the Act of May twenty-seventh, nineteen hundred and eight, is not hereby repealed but amended so as to read as in this Act provided. So much of section four of an Act entitled: "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hun-

1909 dred and seven, and for other purposes," approved June thirtieth, nineteen hundred and six, as relates to the appointment of a solicitor of customs and assistants, is hereby repealed.

1908 SEC. 4. That all laws and parts of laws inconsistent with this Act are hereby repealed.

1897 SEC. 34. That sections one to twenty-four, both inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," which became a law on the twenty-eighth day of August, eighteen hundred and ninety-four, and all Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed. said repeal to take effect on and after the passage of this Act, but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal or modifications; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. And offenses committed and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted or punished in the same manner and with the same effect as if this Act had not been passed. All Acts of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this Act shall not be affected thereby; and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act may be commenced and prosecuted within the same time and with the same effect as if this Act had not been passed: *And provided further*, That nothing in this Act shall be construed to repeal the provisions of section three thousand and fifty-eight of the Revised Statutes as amended by the Act approved February twenty-third, eighteen hundred and eighty-seven, in respect to the abandonment of merchandise to underwriters or the salvors of property, and the ascertainment of duties thereon: *And provided further*, That nothing in this Act shall be construed to repeal or in any manner affect the sections numbered seventy-three, seventy-four, seventy-five, seventy-six, and seventy-seven of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," which became a law on the twenty-eighth day of August, eighteen hundred and ninety-four.

Approved, July 24, 1897.

1894 SEC. 72. All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed, but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal or modifications; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. Any offenses committed and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted or punished in the same manner and with the same effect as if this Act had not been passed. All Acts of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this Act shall not be affected thereby; and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act, may be commenced and prosecuted within the same time and with the same effect as if this Act had not been passed: *And provided further*, That nothing in this Act shall be construed to repeal the provisions of section three thousand and fifty-eight of the Revised Statutes as amended by the Act approved February twenty-third, eighteen hundred and eighty-seven, in respect to the abandonment of merchandise to underwriters or the salvors of property, and the ascertainment of duties thereon.

1890 SEC. 55. That all laws and parts of laws inconsistent with this Act are hereby repealed: *Provided, however*, That the repeal of existing laws,

or modifications thereof, embraced in this Act shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal or modifications, but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modification had not been made.

- 1890 Any offenses committed, and all penalties or forfeitures or liabilities incurred under any statute embraced in, or changed, modified, or repealed by this Act may be prosecuted and punished, in the same manner and with the same effect as if this Act had not been passed. All acts of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in or modified, changed, or repealed by this Act, shall not be affected thereby, and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act may be commenced and prosecuted within the same time and with the same effect as if this Act had not been passed.

SEC. 11. Nothing in this Act shall in any way change or impair the force or effect of any treaty between the United States and any other government, or any laws passed in pursuance of or for the execution of any such treaty, so long as such treaty shall remain in force in respect of the subjects embraced in this Act; but whenever any such treaty, so far as the same respects said subjects, shall expire or be otherwise terminated, the provisions of this Act shall be in force in all respects in the same manner and to the same extent as if no such treaty had existed at the time of the passage hereof.

- 1883 SEC. 13. That the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before the said repeal or modifications; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made, nor shall said repeal or modifications in any manner affect the right to any office, or change the term or tenure thereof. Any offenses committed, and all penalties or forfeitures or liabilities incurred under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed. All Acts of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this Act shall not be affected thereby; and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act, may be commenced and prosecuted within the same time and with the same effect as if this act had not been passed.

- 1913 T. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

- 1909 (No corresponding provision.)
 1897 (No corresponding provision.)
 1894 (No corresponding provision.)
 1890 (No corresponding provision.)
 1883 (No corresponding provision.)

- 1913 U. That unless otherwise herein specially provided, this Act shall take effect on the day following its passage.
 Approved, 9.10 p. m. October 3, 1913.

- 1909 SEC. 42. That unless otherwise herein specially provided, this Act shall take effect on the day following its passage.
 Approved; signed five minutes after 5 o'clock p. m. August 5, 1909.

SEC. 5. That this Act shall take effect and be in force from and after 1908 its passage.

Approved, May 27, 1908.

DECISIONS UNDER THE ACT OF 1897.

Time of Taking Effect of the Tariff Act of 1897.—The tariff act of 1897 became a law only from the moment of its approval by the President, which was 6 minutes past 4 o'clock p. m. (Washington time) on July 24, 1897; and all goods imported and entered for consumption on said day, but prior to such approval, were dutiable under the law of 1894, not that of 1897. Following *In re Iselin & Co.*, T. D. 18533 (G. A. 3989), affirmed by the United States circuit court in *U. S. v. Iselin* (87 Fed. Rep., 194), and by the circuit court of appeals, second circuit; and *In re Stoddard et al.*, T. D. 18537 (G. A. 3993), affirmed by United States circuit court in *U. S. v. Stoddard* (89 Fed. Rep., 699), and by the circuit court of appeals, first circuit (opinion not published).—T. D. 20700 (G. A. 4356).

When an act takes effect by its terms from and after its passage, with a proviso that it "shall not affect any act done or any right accruing or accrued" (sec. 34 of this act), as between the Government and the individual, the act does not take effect until the moment of its approval by the President, when such time can be shown.—*U. S. v. Stoddard*, *Haserick, Richards & Co.* (C. C.), 89 Fed. Rep., 699.

DECISIONS UNDER THE ACT OF 1894.

Date of Effect of Tariff Act of 1894.—The main question raised by these protests relates only to the time when the tariff act of 1894 went into effect, and is covered by the decision of the Supreme Court in the case of *U. S. v. Burr* (15 Sup. Ct. Rep., 1002), affirming board decision *In re Wolff et al.* (G. A. 2775). The board decided that said act went into effect on the 28th day of August, and not before; that there was no intention on the part of Congress that it should have a retrospective operation, and that all goods imported and withdrawn for consumption between August 1 and August 28, 1894, were dutiable at the rate of duty prescribed by the tariff act of October 1, 1890, which remained in force until repealed on said August 28, 1894.—T. D. 16403 (G. A. 3192).

DECISIONS UNDER THE ACT OF 1883.

Date of Effect of Section 7.—Various sections of the act of 1883 recite when each shall go into effect. Section 7 names no date when it is to go into operation. It takes effect from and after the date of the passage of the act.—*Robertson v. Bradbury*, 132 U. S., 491, 493.

DECISIONS PRIOR TO THE ACT OF 1883.

Fractions of a Day.—When necessary to determine conflicting rights, courts of justice will take cognizance of the fractions of a day.

It is true that for many purposes the law knows no division of a day; but when it becomes important to the ends of justice, or in order to decide upon conflicting interests, the law will look into fractions of a day as readily as into the fractions of any other unit of time.—*Grosvenor v. Magill*, 37 Ill., 239, cited in *Louisville v. Savings Bank*, 104 U. S., 469, 474.

Time of Taking Effect.—An act laying duties "from and after the passage of the act" takes effect the beginning of the day on which it is passed and not from the time of its being signed by the President.—*U. S. v. Williams*, 1 Paine, 261; 28 Fed. Cas., 677.

CUSTOMS PROVISIONS IN THE REVISED STATUTES.

AVERAGE PRICE.

SEC. 2910. When merchandise of the same material or description, but of different values, is invoiced at an average price, and not otherwise provided for, the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject.

SEC. 2911. Whenever articles composed wholly, or in part, of wool or cotton, of similar kind, but different quality, are found in the same package, charged at an average price, it shall be the duty of the appraisers to adopt the value of the best article contained in such package, and so charged, as the average value of the whole.

DECISIONS UNDER SECTIONS 2910 AND 2911, REVISED STATUTES.

When Only One Rate of Duty Applies.—Section 2910 of the Revised Statutes does not apply to a mixed invoice where each item of merchandise on the invoice bears the same rate of duty.—T. D. 28596 (G. A. 6690).

Pineapples Invoiced at Average Price.—An importation of pineapples was made in five lots, covered by one invoice, some of which were described as sliced pineapples, others as grated, all being stated to be pineapples preserved in their own juice, and all being invoiced at the average price of 6 shillings per case. The various lots were appraised at different values, and the collector applied section 2910 of the Revised Statutes and assessed duty on the whole importation at the rate to which the highest valued goods on the invoice were subject. *Held*, that section 2910 was not applicable.—T. D. 24781 (G. A. 5473).

Rate of Duty Based on Value.

DUTIABLE RATE.—Where certain cotton undershirts of the same material and description were appraised at different values and invoiced at an average price, duty is properly assessed on all the goods at the rate to which the highest valued goods in such invoice is subject, in accordance with the requirements of section 2910, Revised Statutes.

THE WORD "VALUE" CONSTRUED.—The word "value" as used in section 2910, Revised Statutes, means market value, and should be ascertained by appraisement and not by protest before a board of classification.—T. D. 29072 (G. A. 6776).

Rate of Duty Only, Not Appraisement, Involved.—Section 2910 of the Revised Statutes is a rule for the assessment of the rates of duty and not a rule for the appraisement of values. It has no application except to cases where the goods that have been invoiced at an average rate are not merely of different value but are also subject to different rates of duty, in which case the duty is to be assessed upon the whole invoice at the rate to which the highest valued goods are subject.—Dept. Order (T. D. 27955).

Section 2911 is Still in Force.—Section 2911, Revised Statutes, has not been repealed by the act of June 10, 1890. In *re* Schefer (C. C.), 49 Fed. Rep., 216.—T. D. 11539 (G. A. 714).

Goods Invoiced at an Average Price.—Appraisers to exercise great care in the appraisal of all merchandise invoiced at an average price, following the decision of the Board of General Appraisers, T. D. 12344 (G. A. 1116), in which the word "value" is defined.—Dept. Order (T. D. 12393).

Assortment Prices (Underwear).—Cotton drawers and shirts imported in sizes ranging, as to the shirts, from 34 to 44, and, as to the drawers, from 28 to 44, invoiced at one price per dozen. *Held*, that it is the custom of trade to purchase this quality of shirts and drawers in assorted sizes at one price, and that the provisions of R. S. 2910 do not apply to this class of goods.—T. D. 14621 (G. A. 2379).

Cotton underwear consisting of shirts and drawers run, the shirts from 32 to 44 and the drawers from 28 to 40. The appraiser did not raise the total invoice price, but showed a difference in value between the smaller and the larger sizes. The collector (acting under R. S. 2910) assessed duty on the whole importation at the highest rate given by the appraiser. The importer protests that there is no difference in value between the smaller and the larger sizes. *Held*, that the action of the collector was mandatory by statute, and the remedy of the importer was to call for a reappraisal. R. S. 2910 is not repealed by the act of June 10, 1890.—T. D. 12344 (G. A. 1116).

Additional Duties.—Frozen fish entered at an average price and returned by the appraiser at different values are liable to the provisions of section 2910, Revised Statutes, unless it is the established trade custom in the foreign market of exportation to sell that class of merchandise at an average price. In applying the provisions of section 7, as amended by section 32, act of July 24, 1897, the percentage of advance is to be found by comparing the average price with the value of the highest valued articles as shown by the return of the appraiser. Regular duty should not be assessed on the appraised value when that value is less than the invoice or entered value, unless there is clerical error. (Vide last sentence in section 7, as amended, and T. D. 23519.)—Dept. Order (T. D. 25326).

BAGGAGE.

SEC. 2802. Whenever any article subject to duty is found in the baggage of any person arriving within the United States, which was not, at the time of making entry for such baggage, mentioned to the collector before whom such entry was made, by the person making entry, such article shall be forfeited, and the person in whose baggage it is found shall be liable to a penalty of treble the value of such article.

DECISIONS UNDER SECTION 2802, REVISED STATUTES.

Baggage Over \$500 in Value.

BAGGAGE—SUFFICIENCY OF DECLARATION—"MENTION."—A trunk containing dutiable merchandise of a value exceeding \$500, which, under article 615, Customs Regulations of 1908, must be regularly entered at the customhouse and appraised, arrived as baggage, was described on the usual passenger's declaration as "1 trunk for public stores," and subsequently was entered at the customhouse, a copy of the consular invoice being filed with the entry. *Held*, that this was a sufficient compliance with section 2802, Revised Statutes, providing that dutiable articles found in the baggage of persons arriving within the United States must be mentioned to the collector at the time of making entry.—U. S. v. One Trunk (McNally, claimant), (C. C. A.), T. D. 31731; T. D. 29926 (D. C.) affirmed.

PASSENGERS' BAGGAGE—"MENTION"—"TRUNK."—The baggage declaration of a person arriving from abroad referred only to a "trunk," without specification of its dutiable contents. *Held*, that this was a sufficient compliance with the requirement of section 2802, Revised Statutes, that if a passenger's baggage contains any article subject to duty it shall be "mentioned" to the collector.

"ENTRY"—WHEN ENTRY BEGINS—PRODUCING INVOICE BEFORE CONSUL.—While it is a condition to the entry of merchandise that invoices should be

produced before an American consul abroad, this is not necessarily a part of the entry, within the meaning of section 9, customs administrative act of 1890, relating to illegal "entry." The entry does not begin at the earliest until the owner, after the goods reach this country, begins that series of acts through which, by application to the customs officials, he gains possession of the goods.

FORFEITURE—"ATTEMPT TO MAKE ENTRY"—ABANDONMENT OF ILLEGAL INTENT.—An importer swore to a false invoice value before an American consul abroad, but to the invoice presented at the customhouse added a sum sufficient to make the true value. *Held*, that the case was not within section 9, customs administrative act of 1890, prescribing the penalty of forfeiture where anyone shall "attempt to make any entry" of imported merchandise by means of any fraudulent or false invoice.—*U. S. v. One Trunk (D. C.)*, T. D. 29926; affirmed by T. D. 31731 (C. C. A.), *supra*.

Forfeiture—Baggage—Articles on Person.—Articles on the person are "baggage" within the meaning of section 2802, Revised Statutes, penalizing the concealment of dutiable articles in the "baggage of any person arriving in the United States"; and a package of precious stones found in the pocket of a passenger which he had failed to declare as required by said section is subject to the penalty there provided.—218½ Carats Loose Emeralds *v. U. S.* (C. C. A.), T. D. 28235.

Fines.—Fine provided for in section 2802, Revised Statutes, is treble the foreign value of and duty on dutiable goods not declared in baggage entry.—Dept. Order (T. D. 22264).

Baggage.

DUTIABLE ARTICLES—FAILURE TO MENTION—INTENT.—Under section 2802, Revised Statutes, prescribing penalties for the importation, in baggage, of dutiable articles which are not "mentioned to the collector," *Held*, that the question of good or bad faith is immaterial, and that such penalties were incurred through a passenger's omission to mention dutiable articles, which though designed was not accompanied with fraudulent intent.

MENTION.—The provision in section 2802, Revised Statutes, that dutiable articles in passengers' baggage shall be "mentioned" to the collector, *Held* not satisfied by the mere enumeration of the baggage as consisting of a certain number of trunks, valises, etc., without any specification of the articles contained therein; and the act of a passenger in striking from the printed form for the declaration and entry of his baggage the clause referring to a full description of the articles that is supposed to be given, *Held* not sufficient to put the customs officers on inquiry so as to constitute a "mention," within the meaning of the law, of the dutiable articles in his baggage.

FAILURE TO MENTION—EXEMPTION OF \$100 WORTH.—Where a person incurs the penalties of section 2802, Revised Statutes, through failure to mention to the collector dutiable articles contained in his baggage, as required by said section, he is not entitled to exemption on \$100 worth of the articles as provided in paragraph 697, tariff act of 1897.

ILLEGAL ENTRY—ARTICLES FROM PHILIPPINES.—The penal provisions of section 2802, Revised Statutes, relating to the illegal entry of baggage, are not inapplicable to articles of baggage coming from the Philippines.—*Harts v. U. S.* (C. C. A.), T. D. 26827. Decision in favor of the Government.

Forfeiture—Baggage—Steerage Passengers—Fraudulent Entry.

CUSTOMS DUTIES—FRAUDULENT ATTEMPT TO IMPORT.—A fraudulent attempt to import or bring in dutiable merchandise is not reached by Revised Statutes, section 3082, which is directed only against actual importation or bringing in.

FRAUDULENT ATTEMPT TO ENTER OR INTRODUCE—COMPLETED FRAUD.—To constitute a fraudulent attempt to enter or introduce merchandise into the commerce of the United States in violation of the customs administrative act, June 10, 1890 (ch. 407, sec. 9, 26 Stat. L., 135), as amended by the tariff act of August 5, 1909 (ch. 6, sec. 28, subsec. 9, 36 Stat. L., 97), it is not necessary that the Government actually be deprived of revenue, but only that the acts of attempt be of a character calculated to work such deprivation.

FORFEITURE.—The said amendatory subsection 9 applies to goods attempted to be imported or introduced by means of fraudulent devices of concealment, and for a violation thereof by such an attempt a forfeiture of the goods or their value follows.

USE OF FRAUDULENT DEVICES—FORFEITURE.—Though mere intent to fraudulently introduce merchandise into the country by devices of concealment is not within said subsection 9, yet where the incoming passenger is actually making use of such devices the merchandise is forfeitable under the statute.

DUTIABLE MERCHANDISE IN BAGGAGE—SUFFICIENCY OF DECLARATION OR ENTRY.—The importer of dutiable merchandise fraudulently concealed in his baggage does not, by merely remaining passive, fulfill the obligation of at least putting the customs officers on inquiry as to such merchandise; but the disclosure must be direct or fairly equivalent to a direct disclosure.

DECLARATION AND ENTRY—CUSTOMS REGULATIONS AND PROCEDURE.—The fact that an anomalous or an extraordinary procedure is being pursued by the customs officers of getting merchandise through the customs line affords no excuse to a passenger who attempts by devices of concealment to introduce merchandise into this country in violation of subsection 9, aforesaid.

LOCUS PŒNITENTIÆ.—In such case there is no locus pœnitentiæ extending until the customs officer shall pursue the regular or the usual course; but the goods intended to be unlawfully entered or introduced may be seized as forfeited at any time after the concealment is discovered when once the passenger has started the goods through the customs line with intent to use the devices of concealment to evade duties.

ENTRY OF IMPORTED MERCHANDISE—TIME FOR COMPLETING ENTRY.—The 15-day limit within which to complete entry of imported merchandise, under section 2785, Revised Statutes, does not apply to the case of a passenger taking his goods with him immediately through the customs line, so as to afford a locus pœnitentiæ to an importer who has concealed articles in his baggage with intent to evade duties; nor does Customs Regulations, 1908, article 1092, providing that certain goods shall be sold if not entered within one year, give a locus pœnitentiæ or a privilege of making complete entry at any time within that period.

SMUGGLING—FORFEITURE—CIRCUMSTANTIAL EVIDENCE.—In a forfeiture proceeding under said subsection 9, letters found in a passenger's baggage indicating a plan to smuggle goods for purpose of sale may be sufficient circumstantial evidence to sustain a finding against the passenger of a fraudulent attempt to enter or introduce, so as to satisfy that part of the statute requiring the entry or introduction to be an entry or introduction into the community of the country, even though the passenger is not himself the addressor or the addressee or referred to in the correspondence.

FORFEITURE—BURDEN OF PROOF—MEASURE OF PROOF.—In case of probable cause for an information in rem for forfeiture under subsection 9, aforesaid, the burden is placed on the claimant by section 909, Revised Statutes, and the Government is not, in any event, required to prove its case by anything more than a preponderance of the evidence.

STATUTES—CONSTRUCTION OR FORFEITURE PROVISIONS.—Though the statutes authorizing forfeiture for violation of the law of customs administration are sub-

ject to strict construction, they are also to be construed reasonably and so as to give effect, if possible, to every word thereof.—*U. S. v. A Lot of Silk Goods and Other Merchandise* (Mrs. S. Kataoka, claimant) (D. C.), T. D. 33019.

Forfeiture—Dutiable Articles in Passengers' Baggage.

PASSENGERS' BAGGAGE—EXEMPTED ARTICLES—DUTY OF MAKING ENTRY—FORFEITURE.—In construing the provision in paragraph 697, tariff act of July 24, 1897, that \$100 in value of articles purchased abroad by returning residents of the United States may be admitted free of duty, *Held*, that it is the passengers' duty to enter and declare the value of such articles, whether they cost more than \$100 or not, and that when not so declared they are subject to forfeiture under section 2802.

FORFEITURE—FRAUDULENT INTENT—SMUGGLING.—In construing section 2802, Revised Statutes, providing for the forfeiture of "any article subject to duty found in the baggage of persons arriving in the United States, which was not at the time of making the entry for such baggage mentioned to the collector before whom the entry was made," *Held*, that fraudulent intent is not an ingredient of the cause of forfeiture; also, that dutiable articles found in the handbag of a passenger, after said passenger had entered other dutiable articles, were subject to the enforcement of the penalties prescribed by said section.

TRIAL—JUDGMENT ON THE PLEADINGS.—Under the mandate of the circuit court of appeals directing a new trial, the entry of judgment upon the pleadings, without taking testimony, may properly be directed by the trial court. If the pleadings present such a state of conceded facts as to entitle either party to a judgment, the action of the trial court in making proper disposition of the case, after hearing the argument, is itself a trial.

NOTICE OF MOTION—JUDGMENT ON THE PLEADINGS.—In moving for a judgment on the pleadings in a cause on trial in a Federal court, it is not required by section 537, New York code of civil procedure, that a notice of motion should be given. When the cause is regularly reached for trial, the parties are sufficiently advised that the pleadings and the proofs are before the court for consideration. The notice contemplated in said section is required only when some special application is to be made for judgment on the pleadings in advance of the trial.—*Dodge v. U. S. (C. C. A.)*, T. D. 25609.

PASSENGERS' BAGGAGE—INTENT TO DEFRAUD.—Under section 2802, Revised Statutes, providing for the forfeiture of and the imposition of penal duties on dutiable articles found in passengers' baggage, it is not necessary that there should have been an intent to defraud the revenue in order to incur the penalties there prescribed.

PENAL DUTY—FAILURE TO ENTER BAGGAGE.—Articles subject to duty were found in the baggage of a person arriving in the United States which he had intentionally failed to mention to the collector of customs before whom the entry of the baggage was made. *Held*, that he was liable to a penalty of treble the value of the articles under section 2802, Revised Statutes, though it was not shown that there had been any intention to avoid the payment of duty.

EVIDENCE OF INTENT TO DEFRAUD THE REVENUE.—On examination of a passenger's baggage, dutiable articles were found placed in the skirts of dresses in such a way that they could not be seen until the skirts were unfolded. *Held*, that this evidence would not justify the conclusion that the owner of the baggage had intended to avoid the payment of duty upon such articles.

FORFEITURE—EXEMPTED ARTICLES.—The provision in paragraph 697, tariff act of July 24, 1897, exempting \$100 in value of dutiable articles in the baggage of returning residents of the United States, is not applicable in proceedings under section 2802, Revised Statutes, for the forfeiture of and the collection of penal

duty on dutiable articles not mentioned on the entry of the baggage. It applies only when a proper entry has been made of the articles entitled to such exemption, and not otherwise.

APPRAISEMENT OF FORFEITED ARTICLES.—The statute does not contemplate that, in an action to enforce the forfeiture, or penalty prescribed by section 2802, Revised Statutes, relative to dutiable articles found in passengers' baggage, the court shall be required to make an appraisal of the value of such articles for the purpose of ascertaining what portion would have been entitled to admission free of duty if a proper declaration and entry thereof had been made.—*U. S. v. Harts* (D. C.), T. D. 25608.

Forfeiture—Smuggling.

FRAUDULENT ENTRY—FALSE STATEMENT, APPLIANCE OR PRACTICE.—The first part of section 9, customs administrative act of 1890, relating to the entry of imported merchandise "by means of any fraudulent or false statement, practice or appliance," is intended to relate to merchandise intentionally entered rather than to that the importation of which has been concealed.

FORFEITURE—FALSE STATEMENT—WILLFUL ACT OR OMISSION.—Where a person arriving in the United States falsely and intentionally denies, on being questioned by the customs officers, that he has any precious stones in his clothes or on his person, he is guilty of attempting a "willful act or omission by means whereof the United States shall be deprived of the lawful duties," within the meaning of section 9, customs administrative act of 1890, providing the penalty of forfeiture for such offense.

BAGGAGE—ARTICLES ON THE PERSON—DECLARATION.—Articles carried in the clothing of a passenger arriving in the United States are "baggage" within the meaning of section 2802, Revised Statutes, relating to the entry of baggage; and if they are dutiable the passenger is bound to declare them in all respects the same as if they were contained in his trunk.

MERCHANDISE UNLADEN WITHOUT PERMIT—ARTICLES ON THE PERSON.—A person arriving in the United States took ashore with him from the vessel, without a permit from the customs officers, precious stones that were concealed in his clothing, *Held*, that this was an infraction of section 2872, Revised Statutes, forbidding the unloading of merchandise without a permit.

REQUIREMENT OF ENTRY OR INVOICE—SMUGGLED MERCHANDISE.—Section 4, customs administrative act of 1890, requiring an invoice or declaration of imported merchandise, is intended to relate to merchandise intentionally entered, and not to that the importation of which has been concealed.

SMUGGLING—COMPLETION OF OFFENSE—SEIZURE WITHIN CUSTOMS LINES.—A passenger on a vessel arriving in the United States had gone from the vessel to the dock; his baggage was examined, and he then told the customs officers that he had no precious stones on his person, whereupon, while he was still within the customs lines on the dock, stones in his possession was seized as smuggled. *Held*, that the act of smuggling was complete, and that it was not necessary that he should have passed outside of the customs lines before the seizure was made.—*U. S. v. 218½ Carats Loose Emeralds* (D. C.), T. D. 27851.

FORFEITURE—DECREE BY DEFAULT—OPENING DECREE AFTER EXPIRATION OF TERM.—A decree of forfeiture of merchandise seized for smuggling had been entered by default, and the term of the court during which such entry was made had expired; *Held*, that the decree could not be opened and set aside at any subsequent term.

FORFEITURE PROCEEDINGS—ASSIMILATION TO ADMIRALTY—CONFORMITY TO STATE PRACTICE.—Proceedings in United States courts for the forfeiture of smuggled goods are assimilated to actions in rem in admiralty, and are not

within the purview of section 914, Revised Statutes, requiring that in causes "other than admiralty," etc., the practice in Federal courts shall conform to the practice in State courts in like cases.—*U. S. v. One Trunk Containing Fourteen Pieces of Embroidery* (D. C.), T. D. 28515.

Merchandise in Passengers' Baggage.—A passenger by a steamer from a foreign country had among his baggage three ordinary goods cases filled with new and dutiable goods and intended for sale as such. They were landed on the wharf with the personal baggage of the passengers. They were not named in the manifest of the vessel. No entry was made of the goods, nor had any duties on them been paid or secured to be paid, and no permit had been granted to land them except the general baggage permit issued for the vessel, which authorized the inspector on board to "examine the baggage of all the passengers, and, if nothing be found but personal baggage, permit the same to be landed and send all other articles not permitted in due time to the appraisers stores." The cases were seized on the wharf and an information filed to forfeit them as landed without a permit. *Held*, that on the above facts the jury must find a verdict in favor of the Government.—*U. S. v. Three Cases*, 6 Ben., 558; 18 Int. Rev. Rec., 173; 28 Fed. Cas., 110.

Passengers' Baggage.

FORFEITURE—INTENT TO SMUGGLE.—Mere intent to smuggle goods brought to the United States will not work a forfeiture under section 3082, Revised Statutes. Goods imported with such intent may not be seized by the Government as forfeited while the person importing them may yet change his mind and the time has not come when he has had opportunity to declare them and has not done so.

PASSENGERS' BAGGAGE—ILLEGAL IMPORTATION—DECLARATION.—A person arriving in the United States in possession of a pearl chain, silk wearing apparel, and other articles made a declaration on board the vessel as to certain "wearing apparel" of unknown value, but before completing the entry by giving such further particulars as were necessary for the assessment of duty on the articles thus declared, and while awaiting the convenience of the Government officers assigned to receive such information, and while within the customs lines on the dock adjacent to the vessel, the chain was seized as illegally imported. *Held*, that the declaration of "wearing apparel" sufficiently covered the chain, and that the seizure was unlawful.

ILLEGAL ENTRY—SEIZURE BEFORE COMPLETING ENTRY.—Where an article in the possession of a person arriving in the United States is seized by officers of the Government before the entry of the article can be completed, its owner can not be held for failure to make due entry.

PASSENGERS' BAGGAGE—ARTICLES ON THE PERSON.—Articles on the person and covered from view by the dress of a passenger arriving from abroad do not, when so disposed, cease to be baggage within the meaning of the customs laws relating to baggage of persons arriving in the United States.—*U. S. v. One Pearl Chain* (C. C. A.), T. D. 26419.

Smuggling.—The provisions of R. S. 2802 would appear to apply only to the assessment of duty on dutiable articles found by customs officers in a passenger's baggage and are limited to the articles so found, while R. S. 3082 applies not only to articles which have been smuggled or attempted to be smuggled in that manner, but to goods which have been passed through the customhouse without detection.—*U. S. v. Five Packages of Tapestry*, 114 Fed. Rep., 496.

CASUALTY, INJURY OF MERCHANDISE BY.

SEC. 2984. The Secretary of the Treasury is hereby authorized, upon production of satisfactory proof to him of the actual injury or destruction, in whole

or in part, of any merchandise, by accidental fire, or other casualty, while the same remained in the custody of the officers of the customs in any public or private warehouse under bond, or in the appraisers' stores undergoing appraisal, in pursuance of law or regulations of the Treasury Department, or while in transportation under bond from the port of entry to any other port in the United States, or while in the custody of the officers of the customs and not in bond, or while within the limits of any port of entry, and before the same have been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, out of any moneys in the Treasury not otherwise appropriated, the amount of impost duties paid or accruing thereupon; and likewise to cancel any warehouse bond or bonds, or enter satisfaction thereon in whole or in part, as the case may be.

DECISIONS UNDER SECTION 2984, REVISED STATUTES.

Accidental Dropping of Cask.—Whisky while being transferred to another floor in warehouse was accidentally dropped and most of contents lost. *Held*, that allowance should be made under section 8, act of March 28, 1854.—T. D. 552.

Additional Duties.—Allowance made under section 2984 on tobacco destroyed in warehouse does not include the remission of the additional duties to which the goods were liable.—T. D. 15102.

Authority of the Secretary of the Treasury.—Congress may, if it sees fit, make the Secretary the final arbiter in any class of cases arising under the revenue laws, to determine in a quasi judicial manner, whether by virtue of laws any claim against the Government in favor of the petitioner.

This section makes the Secretary the final tribunal to decide on the validity of any such claim, and his decision is not subject to review by the Court of Claims or any other tribunal.

R. S. 2984 does not authorize the refunding of duties on merchandise after it has been delivered to the importer on his giving bond for redelivery to the customs officers under R. S. 2899.—*D. M. Ferry & Co. v. U. S.* (C. C. A.), 85 Fed. Cas., 550.

Bursting of Cask.—A cask of gin burst owing to the rottenness of its staves, causing loss of contents *Held*, that such loss was not a casualty under section 8, act of March 28, 1854.—T. D. 560.

No allowance can be made under section 2984 for damage to a carboy of kirschwasser by bursting while in warehouse.—T. D. 12517.

Damages on Shipboard.—Section 2984 held to cover damage and destruction by fire on vessel of importation.—T. D. 14997.

Damage Allowances on Account of Casualties.—Section 23, administrative act, does not repeal section 2984, Revised Statutes, as to damages by casualty. The latter section is still in full force.—Dept. Order (T. D. 10172).

Damage by Rats.—Damage to goods in warehouse by gnawing of rats or mice not a "casualty."—Dept. Order (T. D. 15570).

Damage to Duty-Paid Tobacco in Warehouse by Fire.—Where duties were paid and a permit for the goods was issued and delivered to the importer, but, after receipt of a letter from the department, allowing the goods to remain in the warehouse "after the duties have been paid," the permit was returned to the collector, and the goods were thereafter destroyed by "accidental fire," it was held that the goods remained in the custody of the Government, and abatement was accordingly allowed.—Dept. Order (T. D. 11534).

Damage by Moisture.—Damage to tobacco stored in warehouse, caused by moisture from sweating of casks of sal soda penetrating floor and dripping on

tobacco, not a casualty within meaning of section 2984, Revised Statutes.—Dept. Order (T. D. 17322).

Damage by Fire in Elevator.—Damage caused by burning of a floating elevator held entitled to relief under section 8, act of March 28, 1854. Such merchandise considered to be constructively in bonded warehouse.—T. D. 371.

Freezing.—Damage to cherry laurel water by freezing in warehouse held not to be a casualty within the meaning of section 2984, Revised Statutes.—T. D. 13855.

Freezing a casualty within the meaning of section 2984, Revised Statutes.—Dept. Order (T. D. 7968).

Goods Injured Within Limits of Port.—The merchandise was laden upon the steamship *Alene* for exportation. By reason of a collision, the cargo of the steamer had to be discharged, some of it in a damaged condition.

As the *Alene* was within the limits of the port at the time of the collision, the provisions of section 2984 may be construed as covering the case.—Dept. Order (T. D. 5438).

Goods Lost Overboard After Entry.—Goods brought to the dock and regularly entered are subject to duty even though they are lost overboard while unloading, through the carelessness or negligence of those in charge.—T. D. 30729 (G. A. 7051).

Three cases of whisky lost overboard while unloading held to be a casualty and damage allowed.—T. D. 12164.

Heating of Fish.—Section 2984 does not cover damage such as heating of fish unless by "accidental fire."—T. D. 8296.

General Appraisers, Jurisdiction of.—The relief under section 2984 is given to the Secretary alone, and he alone can authorize a review of the methods of ascertainment. Reference is made to G. A. 1024, *infra*.—T. D. 15519 (G. A. 2829).

The Board of General Appraisers has no jurisdiction in cases of loss or damage to goods in warehouse.—T. D. 12210 (G. A. 1024).

Loss by Leakage.—Loss of wine through wormhole in cask is not a casualty.—T. D. 12741.

Leakage in Public Stores.

THE PUBLIC STORES CONSTRUCTIVELY A BONDED WAREHOUSE.—The public stores, sometimes known as "the general-order stores," situated at the port of New York, are impliedly placed by the Revised Statutes of the United States and by the customs regulations in the same category as bonded warehouses, and must be regarded constructively as such.

LEAKAGE NOT A CASUALTY UNDER SECTION 2984, REVISED STATUTES.—A barrel of oil was ordered by the collector of customs to the public stores for examination and appraisement, and while deposited there became entirely empty by reason of leakage before delivery to the importer. *Held*, that such leakage was not a "casualty" within the meaning of section 2984, Revised Statutes.

NO ABATEMENT OF DUTY FOR SUCH LEAKAGE.—The right of the Government to collect duties on such oil is not affected by leakage while in the custody of customs officers and constructively in bonded warehouse, the abatement of duties or allowance for such loss or leakage being prohibited by statute.—T. D. 28933 (G. A. 6749).

Liability Under Common Carrier's Bond.—Section 2984, Revised Statutes, applies solely to the question of abatement or refund of duty per se, when all the requirements of the statute have been met, and its provisions can not be extended to a case where relief is sought from the payment of the sum named

in a common carrier's bond as liquidated damages for failure to safely deliver imported merchandise in pursuance of the act of June 10, 1880, and amendments thereto.—Dept. Order (T. D. 24669).

Loss of Goods in Public Store.—Jewelry seized in 1859 as invoiced below its value. Trial delayed until 1867. Verdict for owner and no certificate of probable cause. The jewelry was placed by the collector in the public store of the customhouse. It was lost and can not be found. *Held*, that when goods are lost from the customhouse while the libel is being tried, the circumstances of the loss not being shown, and the negligence of the collector and storekeeper being neither charged nor disaffirmed, the Government is not liable for the loss, especially where no certificate of probable cause is given. Under section 66, act of 1799, the Government is not liable for the loss of goods while in the public store awaiting trial.—*Schmalz v. U. S.*, 4 C. Cls. R., 142; 5 Id., 294.

Loss of Goods from Warehouse—Collector's Liability.—In an action against a collector to recover the value of goods lost while in a warehouse, no recovery can be had unless it appears that the collector was guilty of actual personal negligence in regard to the safekeeping of the goods, and that in consequence of such personal negligence they were lost. Such negligence can not be inferred from the mere loss of the goods.

The collector is not personally responsible for the negligence of his subordinates in the customhouse. The rule stated as to the responsibility of the collector for losses occurring through the regulations established by the Treasury.

The fact that the bookkeeper in the warehouse was intoxicated daily is not enough to render the collector liable for loss of goods stored in the warehouse, but it must be shown that the goods were lost from the particular cause.—*Brissac v. Lawrence*, 2 Blatchf., 121; 4 Fed. Cas., 153.

Merchandise Not in Custody of Government.—Where goods were entered for consumption and delivered to the importers and were destroyed by fire in their own store, the fact that the usual penal bond had been taken did not place the goods in the custody of the Government.—Dept. Order (T. D. 7312).

Damage by Rain.—No allowance can be made for damage to hay by rain while in transportation under bond.—T. D. 14987.

The cause of the loss or damage must be sudden, inevitable, and unforeseen—not to be guarded against. Injury or loss from ordinary causes does not bring the case within the statute.—T. D. 8472.

Refund of Duties on Merchandise Destroyed by Fire While in Customs Custody.—The word "custody," as applied to merchandise "not in bond" in section 2984, Revised Statutes, which is construed to mean actual custody, implies the right to exercise restraint, and this right exists when there remains something to be done, in respect of the merchandise, either by the owner or by the customs officers in the discharge of their lawful duties before the importer can dispose of the goods at his pleasure.

Conditions not evidenced by the language of a delivery permit may be annexed to such permit by matters resting in parol, or in custom, or by the terms of statutory enactments and Treasury Department regulations.

Section 2984, Revised Statutes, is in the nature of a remedial statute, and should therefore be construed liberally.

Importers should be allowed a reasonable time within which to obtain possession of their goods with proper regard to the exercise of due diligence on their part. What is a reasonable time and what constitutes due diligence are questions to be decided according to the facts in each case presented for determination.

Where certain acts were required to be performed subsequent to the lodgment of the delivery permits before the importers could remove the goods from the dock prior to a fire that resulted in the destruction thereof, no receipts having passed as acknowledgments of delivery, *Held*, that complete delivery to the importers was not made at the moment of time when the permits were lodged with the inspectors in charge, and it being shown that the merchandise was in actual customs custody at the time of the casualty, the importers are entitled to a refund of the duties paid thereon.—Dept. Order (T. D. 22847).

Rust on Iron Manufactures.—Damage allowance for rust on iron manufactures can be made when damage is the result of casualty, under section 2984, Revised Statutes.—Dept. Order (T. D. 8272).

Salvage Claim May Include Duty Saved to the United States.

CLAIMS AGAINST THE UNITED STATES.—A claim for salvage services benefiting the United States, which were not rendered on request of an officer of the United States, but were incidental to services performed in saving private property, does not arise "upon any contract express or implied with the Government," but is "for damages unliquidated, in cases not sounding in tort, in respect of which the party would be entitled to redress against the United States in a court of admiralty if the United States were suable." A suit founded on such claim is, therefore, within the jurisdiction of district courts of the United States, as given by the Tucker Act (24 Stat., 505) in such cases.

PERMISSIVE STATUTES.—Under section 2984, Revised Statutes, by which the Secretary of the Treasury is "authorized" to refund the duties collected on merchandise which is destroyed by fire while in customs custody, it will be assumed that, notwithstanding the permissive character of the language of the statute, the Secretary, in a plain case where no doubts arise as to the propriety of such action, would have refunded the duties on merchandise which has been salvaged, if it had been destroyed by fire.

DUTIES SAVED TO THE UNITED STATES.—Where the Government is liable to refund duties on imported merchandise if destroyed by fire while in customs custody, it is under the same obligation to pay salvage on the duties saved as if property of the Government of the same value had been salvaged. Such liability arises out of the fact that the Secretary of the Treasury is "authorized" by section 2984, Revised Statutes, to refund duties on merchandise destroyed by fire while in customs custody.

DUTIES SAVED TO UNITED STATES ON GOODS NOT IN PORT.—The Government is not liable to salvage claims for duties which are saved to the Government by reason of salvage services rendered on merchandise before it comes to port, as the services are not performed for its benefit and it is advantaged only as a remote consequence.

SALVAGE SERVICES TO UNITED STATES.—Where a claim against the United States is prosecuted on the ground of salvage services through which duties are saved to the United States, the case presented can not be said to arise under the revenue laws of the United States because authority for payment therefor is found in the revenue laws.—*U. S. v. Cornell Steamboat Co.* (U. S.), T. D. 27365; T. D. 26191 (C. C. A.) and T. D. 25601 (C. C.) affirmed.

Removal, for Salvage, of Damaged Goods.—Removal by underwriters for purpose of salvage of goods injured by fire or water in warehouse can only be made after payment of the duty, of which excess will be refunded after proper proofs are furnished.—T. D. 14593.

Theft of Imported Goods.

LOSS BY THEFT NOT A CASUALTY.—Where imported goods are stolen when on the wharf and in charge of customs officers, after being designated by the

collector under section 2901 of the Revised Statutes to be forwarded to the public stores for examination and appraisal, such loss is not a casualty within the meaning of section 2984 of the Revised Statutes, of which the Secretary of the Treasury has jurisdiction.

CONSTRUCTIVELY IN BONDED WAREHOUSE.—Such merchandise is to be regarded in the same position as if technically in a public store or bonded warehouse, no permit for their delivery having been issued to the importers by the collector.

ABATEMENT OF DUTIES PROHIBITED.—An abatement of tariff duties on such merchandise lost by theft is prohibited by section 2983 of the United States Revised Statutes.—T. D. 27129 (G. A. 6291).

* CURRENCY.

Section 25 of the Act of 1894 and section 2903 of the Revised Statutes remain in force. Section 52 of the Act of 1890, which was superseded by section 25 of the Act of 1894, is inserted for purposes of comparison.

1894 **Sec. 25.** That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this Act and thereafter quarterly on the first day of January, April, July, and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: *Provided*, That the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money showing in the invoice was, at the date of certification, at least 10 per centum more or less than the value proclaimed during the quarter in which the consular certification occurred.

1890 **SEC. 52.** That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this Act and thereafter quarterly on the first day of January, April, July, and October in each year.

SEC. 2903. The President may cause to be established fit and proper regulations for estimating the duties on merchandise imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government.

In accordance with the above authority, Consular Regulations of 1896 were issued, article 692 of which, as amended by Executive order of September 28, 1916 (T. D.-36722), reads as follows:

692. Currency certificates.—When the price or value of merchandise obtained by purchase, shipped pursuant to an agreement of purchase, or consigned for sale in the United States is expressed in the invoice in depreciated currency, a currency certificate (form 144) must be attached to the invoice showing the percentage of depreciation as compared with the corresponding standard coin currency and the value in such standard coin currency of the total amount of the depreciated currency stated in the invoice. (Rev. Stat., sec. 2903; T. D. 17252.) This certificate should show, not the value of the depreciated currency

in money of account of the United States, but its value in the terms of the standard coin currency in comparison with which the currency stated in the invoice is depreciated. (T. D. 11314, 17170.)

In the assessment of duty the currency of the invoice is reduced to the money of account of the United States upon the basis of the values of foreign coins at the date of shipment, as proclaimed by the Secretary of the Treasury for the first day of January, April, July, and October of each year. (Tariff of 1894, sec. 25; T. D. 16921.) The date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation. (Tariff of 1894, sec. 25.) In the absence of a currency certificate no allowance will be made for depreciated currency. (T. D. 15435.)

When an invoice is certified by a consul of a nation at the time in amity with the United States, or by two respectable merchants, as provided by section 2844, Revised Statutes, the currency certificate required by section 2903, Revised Statutes, may be issued by the foreign consul or the two respectable merchants who certify the invoice.

For statistical purposes, currency certificates are required for all invoices of merchandise wherein the price or value is expressed in depreciated currency, without regard to the dutiable or nondutiable character of the merchandise.

DECISIONS UNDER SECTION 25, ACT OF 1894.

Austrian Currency.—The Secretary of the Treasury has authority to direct reliquidation of entries under section 25, act of August 28, 1894, on the basis of rate of exchange in this country for foreign currency specified in invoices when the value of such currency is at least 10 per cent less than the proclaimed value, but this authority will be exercised only when it is shown that a reliquidation on such basis will result in the assessment of duty on the actual market value of the merchandise. In the absence of such evidence reliquidation of entries under consideration is denied.—Dept. Order (T. D. 35951).

German and Austro-Hungarian Currencies.—In the liquidation of entries covering merchandise imported from Germany and Austria-Hungary the invoice currency should be converted into money of the United States at the value proclaimed for the quarter in which the merchandise was shipped. Department's instructions of March 17, 1913, modified accordingly.—Dept. Order (T. D. 35317).

Depreciated Currency.—If allowance by reason of a depreciated foreign currency is sought by an importer, it must be either in accordance with consular regulations (art. 692) issued under Executive order provided for in section 2903, Revised Statutes (sec. 5603, 3 U. S. Com. Stat., 1913), in which case a certificate of depreciation must be attached to the invoice on entry, or by virtue of authority granted to the Secretary of the Treasury in section 25, tariff act of 1894, to order a reliquidation under conditions there set forth. *Waentig's case*, G. A. 3514 (T. D. 17252), and *Vandegrift's case*, G. A. 6066 (T. D. 26448), followed.—T. D. 35122 (G. A. 7679).

Date of Invoice Used in Computing Values of Two Different Currencies.—Where merchandise was shipped on September 28, but was entered at the port of entry in the United States under an invoice dated and certified at the port of shipment October 1, the date of the invoice controls and the proportion between the standard of values in the two countries as fixed by the United States Treasury Department for the quarter beginning October 1 governs in computing the actual money value of the imported goods.—*Masson v. U. S.* (Ct. Cust. Appls.), T. D. 31209; (G. A. 6812) T. D. 29278 affirmed,

Valuation of Foreign Coins.

CONSULAR CERTIFICATION OF INVOICE.—The date of the certification of an invoice by the United States consul is conclusive evidence of the time of exportation under the provisions of section 25 of the tariff act of 1894. *U. S. v. Lawrence* (137 Fed. Rep., 466; T. D. 26121).

DATE OF EXPORTATION.—Where two consular invoices were issued of different dates and the one of earlier date abandoned, the importer must stand upon the one presented to the collector and this board.

PAROL EVIDENCE.—The invoice, consular certificate, and entry in this case are public records which can not be altered or modified by parol evidence, and facts relative to an earlier invoice can not be established by extraneous testimony. *Blue Mountain Iron & Steel Co. v. Portner* (131 Fed. Rep., 60); *Shankland v. Washington* (5 Pet., 390).—T. D. 29278 (G. A. 6812).

Turkish Goods Invoiced in France.—It is clearly shown that it has been the custom and practice in the purchase of rugs in this market to buy them in piasters and to settle and pay for them in piasters; but it appears that the reckoning and dealing are done on the basis of francs, 23 francs per 100 piasters. The franc, however, seems to have been used as an arbitrary unit of value, not known as such in the transaction of the business, either in purchase or sale. Hence we conclude that the contention of the importer is correct, and the conversion should have been directly from the piaster to United States money.—Ab. 23259 (T. D. 30601).

Rupee.

RELICQUIDATION.—Section 21, act of June 22, 1874 (18 Stat., 190), provides that in the absence of protest the settlement of duties shall become final one year after entry. *Held*, that the filing of a protest suspends the running of the statute until the protest is decided. Statutes of limitation are statutes of repose, based on the likelihood that inaction for a protracted period would not occur unless a settlement had been made; and while litigation is going on and the parties are using legal proceedings to effect a settlement, it would be at variance with the principles underlying limitations to hold that such statutes were then running.

CURRENCY FLUCTUATIONS.—Section 14, customs administrative act of 1890, provides that decisions by the Board of General Appraisers shall be final and conclusive upon all parties in the absence of appeal, and section 25, tariff act of 1894, provides that the Secretary of the Treasury may in certain cases of fluctuation in currency values order a reliquidation of the duty on the basis of the actual value. After said board had decided that merchandise was dutiable on the basis of the metal value of the currency of the invoice, and the entry had been reliquidated accordingly by the collector, no appeal having been taken in the time prescribed by statute, the Secretary of the Treasury ordered a further reliquidation at a higher value under the authority of said section 25. *Held*, that the action of the Secretary, rather than the unappealed decision of the board, was conclusive.—*Klump v. Thomas* (C. C. A.), T. D. 29103; T. D. 28818 and T. D. 28453 affirmed.

VARIATION FROM PROCLAIMED VALUE.—The body of section 25, tariff act of 1894, provides that the value of imported merchandise shall be estimated on the basis of the "pure metal value" of standard foreign coins as proclaimed by the Secretary of the Treasury, this provision being followed by a proviso under which the Secretary, when satisfied "that the value in United States currency of the foreign money specified in the invoice" has varied a certain extent from the proclaimed value, may order the reliquidation of any entry at a different value from that proclaimed. *Held*, that the proviso does not refer to variation in the

pure metal value alone, covered by the main part of the section, but includes also variation between such value as proclaimed and the exchange value.

AUTHORITY OF SECRETARY OF THE TREASURY.—Merchandise subject to an ad valorem rate of duty was imported from India, invoiced in rupees, the invoice containing a certificate from the American consul that the exchange value of the rupee was 32 cents, this being more than 10 per cent greater than the proclaimed pure metal value of the rupee at the same period (20.7 cents). Acting under the proviso in section 25, tariff act of 1894, which provides that when "the value in United States currency of the foreign money specified in the invoice" varies at the date of consular certification at least 10 per cent from its proclaimed value "the Secretary of the Treasury may order a reliquidation of any entry at a different value," the Secretary directed the assessment of duty on the basis of the exchange value. *Held*, that his action was within the authority given him by said proviso, the reliquidation being on the basis of the units actually used and in conformity with the truth and the actual meaning of the words of the invoice.

CONSTRUCTION—PROVISO.—Though the grammatical and logical scope of a proviso is confined to the subject matter of the principal clause, in practice no such limit is observed, and when dealing with an addition made in new circumstances to a form of words adopted many years before the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down.—*U. S. v. Whitridge* (U. S.), T. D. 26126; T. D. 25154 (C. C. A.) and (G. A. 5110) T. D. 23632 reversed.

SUSTAINING PROTEST WITHOUT TRANSMISSION TO BOARD OF GENERAL APPRAISERS.—Section 14, customs administrative act of 1890, providing for the filing of protests by dissatisfied importers against decisions of collectors of customs and for the transmission of the protests to the Board of General Appraisers for decision, is as well complied with where a collector sustains a protest without such transmission as where he sends it to the board.

RELIQUIDATION BY ORDER OF THE SECRETARY OF THE TREASURY.—A collector of customs liquidated duties at the exchange value of the rupee, and the importers protested under section 14, customs administrative act of 1890, contending that the pure metal value estimated by the Director of the Mint should have governed. The collector sustained the protest under instructions of the Secretary of the Treasury, and reliquidated accordingly, but subsequently re-reliquidated on the same basis as the original liquidation, under further instructions issued under section 25, tariff act of 1894, giving the Secretary the right to order reliquidation in certain cases of variation in currency values. *Held*, that this third liquidation was legal, the Secretary's right to exercise the powers conferred by said section not being impaired by his previous acquiescence in the protest.

RELIQUIDATION AFTER ONE YEAR.—Section 21, act of June 22, 1874 (18 Stat., 190), making final the liquidation and settlement of duties, "after the expiration of one year from the time of entry, in the absence of protest," does not prohibit a reliquidation in an increased amount, where a protest has been filed, even though that protest has been sustained and there remains pending no unsatisfied protest.

COLLECTOR OF CUSTOMS—LIABILITY FOR ACT OF PREDECESSOR.—A cause of action does not accrue against a collector of customs in favor of the importers, because his predecessor failed either to sustain or to forward to the Board of General Appraisers protests that had been filed by the importers under section 14, customs administrative act of 1890.

LIABILITY FOR FOLLOWING INSTRUCTIONS OF SECRETARY OF TREASURY.—A cause of action does not accrue against a collector of customs in favor of importers where he acted in accordance with instructions of the Secretary of the Treasury, issued under section 25, tariff act of 1894, bestowing on the Secretary the

right to order reliquidation in certain cases of variation in currency values.—*Gulbenkian v. Stranahan* (C. C.), T. D. 28451.

RELIQUIDATION BY ORDER OF SECRETARY OF TREASURY—STATUTE OF LIMITATIONS.—Section 21, act of June 22, 1874 (18 Stat., 190), making final the liquidation and settlement of duties "after the expiration of one year from the time of entry, in the absence of protest," does not apply in a case in which a protest has been filed. And under section 25, tariff act of 1894, authorizing the Secretary of the Treasury to order a reliquidation in certain cases of variation in currency values, the Secretary had power to order such reliquidation more than one year after entry in a case in which a protest had been filed but was no longer pending, having been previously sustained by the collector.

DUTY OF COLLECTOR.—It is the duty of a collector to transmit to the Board of General Appraisers protests as to the value of the rupee, filed under section 14, customs administrative act of 1890, which provides that on protest being filed "the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of three general appraisers."

DAMAGES.—Where the breach of the duty of a collector of customs to forward a protest to the Board of General Appraisers, under section 14, customs administrative act of 1890, is merely technical, only nominal damages will be awarded for such breach.—*Kendall v. Lyman* (C. C.), T. D. 28894.

Where the collector liquidates entries expressed in silver rupees of India upon the basis of a value different from that estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury for the quarter covering such exportations, his action is unlawful and the subsequent approval of the Secretary of the Treasury will not validate his action or legally constitute a reliquidation by the Secretary. *U. S. v. Beebe* (106 Fed. Rep., 75; 45 C. C. A., 230).

Importers have a right to have a proper liquidation made by the collector in the first instance prior to any action being taken to make a reliquidation ordered by the Secretary of the Treasury. *U. S. v. Beebe* (supra).—T. D. 26571 (G. A. 6094).

AUTHORITY OF THE SECRETARY OF THE TREASURY TO RELIQUIDATE.—Where the exchange value of the invoice currency is found to differ more than 10 per cent from the value of the pure metal therein as ascertained by the Director of the Mint and proclaimed by the Secretary of the Treasury for the respective quarters covering importations, the entries of which have been liquidated upon the basis of such pure-metal value, the Secretary of the Treasury, under the authority conferred on him by section 25 of the act of August 27, 1894 (28 Stat. L., pp. 509, 552, ch. 349; U. S. Comp. Stat., 1901, p. 2375), has full power to order a reliquidation of such entries on the basis of the exchange value of the invoice currency. *U. S. v. Whitridge* (197 U. S., 135; 25 Sup. Ct. Rep., 406; T. D. 26126).

JURISDICTION OF THE BOARD OVER RELIQUIDATIONS BY THE SECRETARY OF THE TREASURY.—Where the collector, under orders from the Secretary of the Treasury, makes a reliquidation under the proviso to said section 25, tariff act of 1894, the board will in the first instance take jurisdiction of the case for the purpose of ascertaining whether such reliquidation was lawful and in accordance with the powers conferred by law on the Secretary. If the Secretary acts within the scope of his authority, the board is without jurisdiction to review his action, as it is not the decision of the collector within the meaning of section 14, customs administrative act of June 10, 1890, but that of the Secretary. In *re Noon Bag Co.*, G. A. 4288 (T. D. 20134); In *re Beebe*, G. A. 5033 (T. D. 23384); *U. S. v. Beebe* (103 Fed. Rep., 785); In *re Riker*, G. A. 3815 (T. D. 17940).—T. D. 26570 (G. A. 6093).

The authority conferred upon the Director of the Mint to estimate the values of standard coins under the provisions of section 25, tariff act of 1894, necessarily includes the power to determine in the first instance whether or not a certain coin used in a foreign country is in fact a monetary standard. *Held*, accordingly, that the India rupee was not a standard coin at the time of certain importations covered by these protests—from May to October, 1904, inclusive. In *re Moringlane et al.*, G. A. 5047 (T. D. 23422); *U. S. v. Whitridge*, reported in T. D. 26126.

The standard value of the rupee not having been thus proclaimed by the Director of the Mint, an invoice expressed in such coin may be ascertained by the collector in standard gold dollars of the United States in accordance with the Customs Regulations of 1899. Note *De Forest v. Redfield* (4 Blatch., 478; 7 Fed. Cas., 364).—T. D. 26188 (G. A. 5979).

The Director of the Mint has the power, under the provisions of section 25, tariff act of 1894, to determine in the first instance whether or not a certain coin used in a foreign country is in fact a monetary standard. His failure or refusal to find the standard value of the rupee is conclusive on the board that this currency is not a standard within the meaning of said section. In *re Moringlane et al.*, G. A. 5047 (T. D. 23422); *U. S. v. Whitridge* (197 U. S., 135; 25 Sup. Ct. Rep., 406; T. D. 26126); In *re Ames & Harris*, G. A. 5979 (T. D. 26188).

No standard value of the rupee having been found by the Director of the Mint as required by law, an invoice expressed in rupees may be converted into terms of standard gold dollars of the United States by the collector.

The Indian currency acts of 1870 and 1899, having been before Congress in a report and having been ordered to be printed by a concurrent resolution of the Senate and the House, have become public documents and are therefore public facts of which the board and the courts may take judicial notice. *U. S. v. Whitridge* (*supra*).

The currency of India was on a silver basis until the act of September 15, 1899, which adopted the gold standard.—T. D. 26572 (G. A. 6095).

Date of Exportation.

CONSULAR CERTIFICATE ON INVOICE.—The currency of the invoice being stated in Indian rupees, the certification of the invoice by the United States consul, made October 11, 1900, has to be taken as conclusive evidence of the time of exportation, by virtue of section 25, tariff act of 1894, which expressly provides that the date of the consular certificate of any invoice shall be considered the date of exportation, and the actual shipment of the goods at an earlier date will be immaterial.

VALUATION OF RUPEE.—The valuation of the rupee in such case has to be taken at 32.4 cents, as provided by circular of the Treasury Department of October 1, 1900 (T. D. 22517), and not at 20.8 cents, as provided by the circular of July 1, 1900 (T. D. 22322).—T. D. 26816 (G. A. 6188).

Spanish Gold—Cuban Invoices.

ACTION OF THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 25 OF THE ACT OF 1894 CONCLUSIVE.—The value of foreign coins, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury pursuant to section 25 of the act of August 28, 1894, and everything pertaining thereto is conclusive and not subject to review by the Board of United States General Appraisers or the courts. *Moringlane's case*, G. A. 5047 (T. D. 23422); *Ames & Harris' case*, G. A. 5979 (T. D. 26188); *Collector v. Richards* (23 Wall., 246; 90 U. S., 246); *Cramer v. Arthur* (102 U. S., 612), and *Hadden v. Merritt* (115 U. S., 25).

SECTION 25 NOT APPLICABLE.—The Republic of Cuba has no currency or coin of its own in circulation and no monetary unit, and the term "Spanish gold," in which the unit of value is expressed, does not appear in any of the quarterly estimates made by the Director of the Mint and proclaimed by the Secretary of the Treasury, and has no definite meaning, and is not known to be the name of any coin or unit of value in Cuba or any other country; hence, in translating the terms of the invoices expressed in Spanish gold to the money of the United States section 25 of the act of August 28, 1894, is not applicable.

ACTUAL PRICE PAID.—Where there is no question that the price paid for imported merchandise is the market value thereof, and such merchandise is entered on an invoice made out in terms which do not express the unit of value of any country or the name of any coin, the value of which has been estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury pursuant to section 25 of the act of August 28, 1894, the collector in determining the amount in the money of the United States upon which tariff duties should be assessed should ascertain the exact amount paid for such merchandise in the money on account of the United States, and upon this amount duty should be assessed.—T. D. 26515 (G. A. 6083).

Reduction of Foreign Coins to United States Currency.—In reducing foreign standard coins to United States currency the basis in all cases is the value of the pure metal in such coins and not their exchange value. This long-established rule was not changed by the proviso to this section, where it appeared that the value specified in the invoice had varied at the time of the invoice more than 10 per cent from that proclaimed by the Secretary for that quarter; and the collector is not authorized, because the consular certificate accompanying the invoice shows the current exchange value of the money of the invoice to be more than 10 per cent greater or less than the proclaimed value for the quarter, to depart from such proclaimed value and adopt for the purpose of assessing duty the exchange value shown by the certificate.—U. S. v. J. Alston Newhall & Co. (C. C.), 91 Fed. Rep., 525. See U. S. v. Whitridge, 197 U. S., 135; T. D. 26126.

Estimate of Director of Mint.

POWER TO DETERMINE WHAT ARE STANDARD COINS.—The power conferred upon the Director of the Mint to estimate "the values of the standard coins in circulation of the various nations of the world" (sec. 25, tariff act of 1894) necessarily involves the power to determine in the first instance whether or not a certain coin is standard.

SPANISH SILVER PESETA.—His finding in the proclamation of July 1, 1900, that gold and silver pesetas were standard coins, is conclusive upon customs officers.

His omission of the silver peseta coins from recent proclamations seems to indicate that he no longer considers it a standard coin.—T. D. 23422 (G. A. 5047).

Consular Currency Certificates.—Under section 25, act of 1894, the proclamation of the pure metal value of foreign coin is obligatory upon officers of the customs in the estimation of duties only as to "standard" currencies. The silver peseta of Spain is not the standard, and therefore currency certificates under section 2903, Revised Statutes, in proper form attached to invoices made out in silver pesetas under section 2, act of June 10, 1890, are conclusive.—Dept. Order (T. D. 23031).

Currency—Standard and Depreciated.

INVOICE CURRENCY PRESUMED TO BE STANDARD.—In an invoice of goods exported from the Kingdom of Greece, where the currency of the invoice is de-

scribed as drachmas, it is presumed to refer to the standard coin of that name, and not to a depreciated or paper currency.

CONSULAR CERTIFICATE REQUIRED.—In the absence of a consular currency certificate complying with the requirements of article 692, consular regulations, no allowance can be made lawfully for any depreciated currency. In *re Waentig, Solinger & Co.*, G. A. 3514 (T. D. 17252), affirmed in Circuit Court for the Southern District of New York, in suits 1522–1523; *Hecht v. Magone* (reported in T. D. 10013).—T. D. 26448 (G. A. 6066).

Certificate of Depreciation Should be Attached to the Consular Invoice.—Where merchandise is entered upon a pro forma invoice and the consular invoice thereafter produced, the requirements of the statute and of the regulations requiring a certificate of depreciation in the value of currency to be attached to the invoice are satisfied if such certificate of depreciation is attached to the consular invoice.—T. D. 26605 (G. A. 6108).

Invoice in Mexican Dollars.—The invoices of certain imported pineapples were made out in Mexican dollars, such being the currency in which the goods were purchased. On each of the invoices were noted the exchange equivalents of the amount thereof in sterling and United States gold. *Held*, that the collector erred in liquidating the entries on the basis of such exchange equivalents of the amounts of the invoices; that he should have liquidated on the basis of the value, of the Mexican dollar as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury for the respective quarters within which the invoices were certified by the United States consul.—T. D. 25596 (G. A. 5792).

Value of Persian Currency—Tomans and Krans.—Where the Director of the Mint estimates the value of foreign coins in terms of the money of account of the United States and such value is proclaimed by the Secretary of the Treasury under the provisions of section 25, tariff act of 1894, still in force, this value as thus estimated is conclusive on the board and the courts and not subject to review, and it is immaterial that the importer paid for this currency in the country of exportation an amount less than such estimated value.—T. D. 28348 (G. A. 6649).

Liquidation at Higher Value than that Proclaimed by Secretary.—Entry made on an invoice in rupees and liquidation not in accordance with the proclaimed value, but at a higher value, the collector assuming to act under the proviso that the Secretary may order reliquidation on satisfactory evidence that the value of the foreign money exceeds by 10 per cent the proclaimed value. The importer made protest. After protest the Secretary wrote the collector that he was satisfied the value of the foreign money was more than 10 per cent greater than the proclaimed value, and that under the authority conferred on him he approved the collector's action. *Held*, that the importer had a right to have a proper liquidation in the first instance, which right was fixed by the protest, and was not affected by the subsequent action of the Secretary.—U. S. v. Beebe (C. C. A.), 106 Fed. Rep., 75, affirming 103 id., 785, and T. D. 21423 (G. A. 4498).

DECISIONS UNDER SECTION 52, ACT OF 1890.

Japanese Silver Yen.—The date of exportation of merchandise is not, presumptively, the day of the date of the bill of lading, but is the date of the actual sailing of the vessel transporting the goods in question. See *Irvine v. Redfield* (23 How., 170).

In the absence of other proof, it will be presumed that such vessel did not sail prior to the date of the authentication by the United States consul of an invoice of goods transported by her.

In estimating the value of the currency of an invoice, the collector is to be governed by the proclamation of the Secretary of the Treasury for the quarter in which the actual sailing of the vessel occurred.—T. D. 20954 (G. A. 4400).

Invoice Value to Be Stated in Currency Paid for Goods.—"Invoice value" is value per unit of quantity and not the value stated in the invoice for the total importation. The currency of the invoice is the currency in which the "invoice value" is given, and a total valuation in a different currency is to be ignored.—T. D. 18914 (G. A. 4071).

Consular Certificates of Depreciated Currency.—Consular certificates must be presented with invoices at the time of entry; they must follow the form prescribed by the President (T. D. 11661); they must state the percentage of depreciation from the standard coin or currency of the country.—T. D. 17252 (G. A. 3514).

The gist of the certificate of the consul is the percentage of depreciation, the statement of the total being merely an extension or computation. The consul could not certify the value in United States money, but only in the standard currency of the country of exportation.—T. D. 17170 (G. A. 3487).

Currency Values, Russian Rubles—Jurisdiction of General Appraisers.—Goods exported from Russia during the last quarter of 1891 and brought to this country during the first quarter of 1892, invoiced in paper rubles and the value converted into silver at the rate mentioned in the consular certificate, and the silver reduced to United States money at the rate given in the estimate proclaimed by the Secretary on October 1, 1891. The importer claimed that the reduction should be on the estimate of January 1, 1892. Protest overruled.—T. D. 17160 (G. A. 3477).

Value of the Persian Kran.—Goods invoiced in Persian krans, which were estimated at 8 to the dollar, and which the importer claims are worth $9\frac{1}{4}$ to the dollar. The kran not being included in the estimate promulgated by the Secretary, the board accepts the statement of the Imperial Bank of Persia, in London, which gives 45 krans to the pound, being the equivalent of $9\frac{1}{4}$ krans to a dollar.—T. D. 14827 (G. A. 2510).

Purchased Goods Invoiced in Currency of Purchase Entered Under Duress in Currency of Country of Exportation.—Goods purchased in Malaga and paid for in money of Great Britain, which is the custom of that place. The consul refused to certify the invoices in such currency, but forced the importer to make the invoice in the Spanish peseta, estimated by him. *Held*, that the entry was under compulsion, that the invoices are illegal, and that on the receipt of an invoice made in the currency actually paid the appellants are entitled to make entry on same.—T. D. 14246 (G. A. 2210).

Italian Lira.—Invoice made out in Italian lira, a depreciated currency, the value of which was certified to by the consul as prescribed in Executive order of August 11, 1892. The collector estimated the value as proclaimed for the standard coin of Italy. *Held*, that the value should have been estimated on the certificate of the consul.—T. D. 13511 (G. A. 1813).

Russian Rubles (Paper and Silver).—Invoice of wool made out in Russian paper rubles, the extension being made in paper and silver rubles, and the consul in certifying the value included both the given number of paper and silver rubles, in addition to which he separately certified the value of the paper ruble. *Held*, that the value of the merchandise in silver rubles, given by the consul and returned correct by the appraiser, was binding on the collector and the entry should have been liquidated in accordance with the value of the silver ruble as proclaimed by the Director of the Mint. See T. D. 11752 and T. D. 11800.—T. D. 12625 (G. A. 1274).

Austrian Florin.—The value of foreign coin at the date of exportation is to be taken and not the value at the time of importation.—T. D. 12577 (G. A. 1261).

Goods shipped from Austria on November 19, 1890, and invoice made out in florins. The value as estimated on the value of the florin as proclaimed by the Director of the Mint on October 1, 1890. *Held*, that the value thus established is to be taken until January 1, 1891, unless it is shown that the paper florin in which payment was made is a depreciated currency.—T. D. 11875 (G. A. 866).

Dutiable Value of Russian Wool—Invoiced in Depreciated Currency—Paper Rubles of Russia.—Russian wool of class 3 dutiable under paragraph 385, act of 1890, was invoiced in paper rubles. Attached to the invoice was a certificate of the United States consul as to the value of the paper ruble. The appraiser found the value at the time of the shipment as given by reducing the paper to United States money at the rate fixed by the consul to be the true market value. The collector assessed duty on a valuation based on the value of the ruble as fixed by the Secretary in proclamation of October 1, 1890, under the act of October, 1890. *Held*, (1) that the appraiser exhausted his powers when he found the value in paper rubles at date of shipment; (2) that it was exclusively the duty of the collector at the date of entry to reduce the ruble to its equivalent in gold dollars; (3) that the President can not fix an arbitrary value to depreciated currency without regard to its intrinsic value; (4) that the instructions given by the Secretary as to the value of depreciated currency are to be regarded as given by the President; (5) that by regulations established by the President the value of the paper ruble was that given in the consular certificate. (Art. 1294, Regulations 1884, and T. D. 7398.)—T. D. 11847 (G. A. 838).

Section 3564, Revised Statutes, Repealed.—Section 52 of the act of October 1, 1890, repeals Revised Statutes 3564, and goods purchased August 12, 1890, invoiced in rupees, entered October 5, 1890, and entry liquidated December 26, 1890, should be assessed on the value of the rupee as proclaimed by the Secretary October 1, 1890.—T. D. 10876 (G. A. 371).

Legality of Currency Circular.—The proclamation of the Secretary, October 1, 1890, establishing the values of foreign coins, held to be legally issued. Section 52 authorizing such regulation "immediately after the passage of this act" presumed to have been in force at that time.—T. D. 10872 (G. A. 367).

Invoice Value in Marks and Florins.—The invoice of goods purchased in Austria stated the value in both florins and marks, florins being the legal currency. The collector on reducing both expressions of value found that the florins gave \$207 and the marks \$240, and assessed the duty on the latter valuation. *Held*, that this was erroneous; that the value must be taken in the legal currency of the country where the purchase was made; and this was not merely a question of appraised value, which could not be raised by protest, under section 14, act of June 10, 1890.—U. S. v. Klingenberg (C. C.), 77 Fed. Rep., 279.

Austria-Hungary Florins.—A proclamation of the Secretary stated the value of the florin of Austria-Hungary to be \$0.482 according to the gold standard, \$0.32 according to the silver standard, with silver the nominal standard, paper the actual standard, its depreciation measured by the gold standard. *Held*, that a valuation of imported merchandise in florins must be reduced to United States currency on the basis of the gold standard. Reversing the Board of General Appraisers.—U. S. v. Knauth (C. C.), 77 Fed. Rep., 599.

Austria-Hungary Paper Florins.—Invoice made out in paper florins of Austria-Hungary. No consular certificate giving the value of the paper florin accompanied the invoice. In reducing the invoice currency to United States money the collector estimated the florin at \$0.482, the value of the gold florin as proclaimed by the Secretary. The importer claimed that the collector should have adopted the silver florin as the standard value as proclaimed by the Secretary, which was \$0.32. *Held*, (1) that the collector's action was correct, for the reason that in the proclamation of July 1, 1892, fixing the value of foreign coins, and the footnote thereto, silver was stated to be only the nominal standard, while paper was the actual standard, the depreciation of which was to be measured by the gold standard; (2) the action of the collector in adopting the gold standard at the estimate fixed was not subject to review by the Board of Appraisers; (3) a circuit court has jurisdiction to review the action of the Board of General Appraisers in entertaining such an appeal and in reversing the action of the collector in that respect.—*U. S. v. Klingenberg*, 153 U. S., 93.

Value of Currency at Time of Exportation.—This section and Revised Statutes 3564 do not require the Secretary to take the valuation of the coin as established by proclamation at the date of the entry, rather than at the date of exportation, in the estimate of the value of imported merchandise. And the proclamation of July 1, 1891, and the corresponding regulations of 1892, changing the time from the former to the latter date, are valid. Sustaining the circuit court.—*Wood v. U. S. (C. C. A.)*, 72 Fed. Rep., 254.

DECISIONS UNDER EARLIER STATUTES ON SAME SUBJECT MATTER.

Consular Certificate of Depreciated Currency.—In an action to recover duties paid on importations valued in depreciated foreign currency, where it appears that a bond was given under regulations of February 1, 1857, article 226, for the production of the consular certificate of its valuation in Spanish or United States silver dollars, the importer can not recover if he fails to show that such certificate was produced within the time prescribed in the bond.—*Cousinery v. Schell*, 34 Fed. Rep., 272.

Where two entries on importations from the same Austrian port were made not much over one month apart, and the goods were valued in the invoices in both cases in a depreciated paper currency, and a deduction was claimed in both cases on that account, a proper consular certificate having been presented to the collector in the first case and rejected on the ground that no allowance for depreciation could be made, and there being a proper written protest in the second case, *Held*, although the importer presented no consular certificate with his entry in the second case, he was entitled in that case to a deduction of the rate of depreciation stated in the certificate in the first case.—*Reynolds v. Maxwell*, 2 Blatch., 555; 20 Fed. Cas., 623.

It is not necessary that a consul's certificate as to the value of paper currency should be presented with the invoice when the entry is made, but if it is not so presented a bond must be given to produce it.

When such a certificate is rejected, or when an offer is made to produce one and the collector does not exact such bond, it will be presumed that the collector refused to be governed by such certificate if exhibited.—*Craig v. Maxwell*, 6 Fed. Cas., 728.

Under section 61, act of 1799, the President has, through circulars from the Treasury Department, regulated the manner in which the costs of goods invoiced in a foreign depreciated currency shall be estimated in United States currency.

Such regulation is in force in respect to depreciation of the Austrian florin, occurring since the act of May 22, 1846.

To entitle an importer to an allowance for any depreciation of Austrian currency his invoice must be accompanied by a consular certificate of the value of such currency.

It is not necessary for the collector to demand such certificate from the importer; but the importer must offer to the collector such certificate, or a bond must be given to produce it thereafter, in order to be entitled to an allowance for such depreciation.—*Rich v. Maxwell*, 3 Blatch., 127; 20 Fed. Cas., 677.

Invoice Values in Marks and Florins.—Merchandise purchased in Bohemia, within the Empire of Austria-Hungary, of which country the florin was the standard currency, was invoiced to the importer at New York, and the values in rix marks and florins, the value of the florin being stated in the certificate of the consul annexed to the invoice as 41.57 cents. *Held*, that the value of the merchandise should have been estimated in florins reduced to United States currency on the basis of 34.5 cents to the florin, as declared by the Director of the Mint and proclaimed by the Secretary on the 1st of January previous, and not in rix marks at 23.8 cents to the rix mark, although the total value of the goods in United States money as greater by the latter process.—*In re McCarty* (C. C.), 46 Fed. Rep., 360.

Consular Certificate on Depreciated Currency.—Under the proviso to section 61, act of March 2, 1799, an importer of goods from Austria is entitled to enter them on the payment of duties on their specie value, although the invoice is made out in a depreciated paper currency legitimated by the Austrian Government; but in order to avail himself of the benefit of the proviso the deterioration of the invoice currency must be proved in the manner required by the proviso.

Accordingly as the proviso authorizes the President to make regulations for estimating the duties on goods invoiced in a depreciated currency issued under the authority of a foreign government, *held*, that under a Treasury circular requiring invoices of goods when made out in such depreciated currency to be accompanied by a consular certificate showing the specie value of such currency the presentation of such certificate is a prerequisite to any correction of the invoice or to any relief founded upon such depreciation in currency.

Where no such certificate accompanies the invoice and no bond for its production is given its place can not be supplied by parol evidence of the depreciation of the currency.—*Dutilh v. Maxwell* (2 Blatchf., 541), 8 Fed. Cas., 168.

Invoice Currency.—A consular certificate attached to an invoice, as to the value of the foreign currency in which the invoice is made out, is only prima facie evidence of such value and may be contradicted by the importer.

An importer being required under section 36 of the act of March 2, 1792, to specify in his entry the species of money in which the invoice is made out, and it being required by section 2 of the act of March 3, 1801, that the invoices of goods subject to ad valorem duty shall be made out in the currency of the country from which the importation is made and shall contain a statement of the actual cost in such currency, without respect to the value of the coins of the United States in such country, and it being provided by section 61 of the act of 1799 that all denominations of foreign money not therein enumerated shall be estimated in value, as nearly as may be, according to the intrinsic value thereof as compared with the moneys of the United States, an importer

whose invoice and entry are correctly made out in a denomination of foreign money not enumerated in said section is entitled to have the value of his goods estimated, for the purposes of duties, according to the intrinsic value of such foreign money compared with the money of the United States.—7 Fed. Cas., 364.

Russian Ruble, Value of.—Wool of the third class was dutiable at 3 cents per pound if its value at the last port or place of exportation to the United States, excluding charges in such port, was 12 cents or less per pound, and at 6 cents per pound if such value exceeded 12 cents per pound. On January 5, 1874, such wool bought in Russia in October, 1873, the actual cost of which, exclusive of charges, was below 12 cents per pound at the time and place of exportation, was entered at the customhouse at New York at an invoice value stated in Russian silver rubles. The collector computed the ruble at 77.17 cents under the authority of a proclamation to that effect made by the Secretary in December, 1873, in pursuance of an estimation of the value of the ruble for 1874 made by the Director of the Mint. Prior to that act the value of the ruble had been fixed at 75 cents. If the ruble had been computed at 75 cents the invoice value would have been less than 12 cents per pound. Computing it at 77.17 raised such value above 12 cents per pound. The collector exacted a duty of 6 cents per pound. In an action to recover, held, (1) the effect of the act of March 3, 1873, was to repeal the act of 1843; (2) the requirements of section 7 of the act of March 3, 1865, forbade the assessment of duty on an amount less than the invoice value; (3) the collector was therefore required to compute the ruble at 77.17 cents, although the cost of the goods, computing the ruble at 75 cents, was 12 cents or less per pound.—*Heinemann v. Arthur's Executors*, 120 U. S., 82.

Austrian Florins are to be valued at the rate fixed by the Director of the Mint.—*Meyer v. Cooper* (C. C.), 44 Fed. Rep., 55.

Appraisal, When Currency Is Depreciated.—Appraisers must in valuing importations adopt the real market value of goods abroad in cash and not their value in depreciated currency.

Goods purchased in Austria were invoiced and entered here in florins at their specie value. The appraiser valued the goods according to the nominal value of the florin paper currency, which was 11 per cent less than its specie value. Held, that the appraisement was erroneous and should have been made in florins at their specie value.

Such an erroneous appraisement is not conclusive on the importer.—*Lowenstein v. Maxwell*, 2 Blatch., 401; 15 Fed. Cas., 784.

French Franc, Value of.—The act of May 22, 1846, section 1 (9 Stat., 114), enacting that "in all computations at the customhouse the franc of France shall be estimated at 18 cents and 6 mills," is repealed by the act of March 3, 1873 (17 Stat., 602). Held, accordingly, that the Director of the Mint having estimated the franc of France at 19 cents and 3 mills, and the Secretary of the Treasury having on January 1, 1874, proclaimed it as of that value, goods invoiced in French francs and entered in March, 1874, were to be charged at the new valuation of the franc.—*The Collector v. Richards*, 23 Wall., 246.

Certificate on Depreciated Currency Produced After Liquidation.—Where duties on an importation are fully paid, a consular certificate of depreciation of the foreign paper currency in which the invoice was made up can not be afterwards presented to the collectors so as to entitle the importer to recover back the duties paid on the difference between the specie value of the goods and their invoice value.—*Dutilh v. Maxwell*, 2 Blatch., 548; 8 Fed. Cas., 170.

Estimation of Values.—If the value of a foreign coin be estimated by the Director of the Mint upon the basis used by him in estimating the value of other foreign coins of the same metal, proclaimed by the Secretary on the 1st day of January of any year, and be proclaimed by the Secretary during a subsequent month of the same year, the director, in the absence of any proof to the contrary, will be presumed to have performed his entire duty and to have made such estimation of value at the time required by section 3564, Revised Statutes, and the proclamation during such subsequent month by the Secretary of the value so estimated is a compliance by him with the requirements of that section.—*Gordon v. Magone* (C. C.), 40 Fed. Rep., 747.

Values of Foreign Coins.—The valuation of foreign standard coins under R. S. 3564 is as binding on collectors and importers as if declared by statute, and evidence is not admissible to show that it is inaccurate.

Pursuant to R. S. 2903, regulations were established that where the standard value of a foreign currency has been proclaimed by the Secretary in the manner provided by law such value shall control in estimating custom duties unless the collectors have been otherwise instructed or unless a depreciation in the value of that currency, "expressed in an invoice from the standard of that currency, shall be shown by consular certificate thereto attached." *Held*, that the proclamation and certificate are conclusive.—*Cramer v. Arthur*, 102 U. S., 612.

Austrian Paper Florin.—The proviso to section 61, act of March 2, 1790, is not repealed by the act of May 22, 1840 (9 Stat., 14) which prescribes the rates at which foreign coins shall be estimated in computations at the custom-house.

Notwithstanding the act of May 22, 1846, an importer of foreign goods is entitled, under the proviso to section 61, act of 1799, and the Treasury instructions issued for carrying the same into effect, to enter his goods upon paying duties only upon their cash value in the country of their purchase and is entitled, in order to fix their value, to have the paper or nominal value at which they were purchased and invoiced reduced to its specie value in such country at the time of the purchase and to enter the goods on that valuation.

Where goods purchased in Austria in 1850 were imported and the entry and invoice set forth the price in paper florins at which they were paid for, and it appeared that the paper florin was depreciated in Austria at the date of purchase below the value of the silver florin, although it was the legal currency in Austria and was a legal tender at its nominal value, *held*, that although the act of May 22, 1846, directed the florin of the Austrian Empire to be estimated at 48½ cents, yet under the proviso of section 61, act of 1799, and the Treasury instructions in regard to invoices made out in foreign depreciated currency, the goods were chargeable only with duty on their value in silver florins after allowing for the depreciation.—*Grant v. Maxwell*, 2 Blatchf., 220; 26 Hunt Mer. Mag., 60; 10 Fed. Cas., 981.

Wool—Value at Time of Shipment.—Wool purchased in Buenos Aires and paid for in depreciated paper dollars. Between the date of the purchase and the date of shipment wool depreciated in value. If the purchase price had been reduced to money of the United States at its ratio on the day of purchase the value of the wool would have been less than 12 cents per pound. If the value at the date of shipment had been reduced at the price of the paper money on that day the value would have been less than 12 cents. The only way to make the price exceed 12 cents per pound was to reduce the purchase price as given in the invoice to money of the United States at the value of the paper money on the day of shipment. This method was followed and the value assessed at

more than 12 cents and duty assessed at 6 instead of 3 cents per pound. *Held*, that this appraisement was not conclusive on the court, although no reappraisement was demanded, and as the wool was actually worth less than 12 cents at the time and place of shipment the importer could recover the excess of duty paid.—*Davidson v. Draper*, 5 Int. Rev. Rec., 94; 7 Fed. Cas., 31.

Bremen Thaler.—Under the act of March 3, 1843, the value of the Bremen thaler of 72 grotes is fixed at 71 cents, and if the collector in assessing duties in an invoice and entry made out in Bremen thalers computes the thaler at a higher rate than 71 cents the excess of duties in consequence of such computation may, if paid under a proper protest, be recovered back.—*Roosevelt v. Maxwell*, 3 Blatchf., 391; 20 Fed. Cas., 1155.

DESIGNATION OF PACKAGES FOR EXAMINATION.

SEC. 2901. The collector shall designate on the invoice at least one package of every invoice, and one package at least of every ten packages of merchandise, and a greater number should he or either of the appraisers deem it necessary, imported into such port, to be opened, examined, and appraised, and shall order the package so designated to the public stores for examination; and if any package be found by the appraisers to contain any article not specified in the invoice, and they or a majority of them shall be of opinion that such article was omitted in the invoice with fraudulent intent on the part of the shipper, owner, or agent, the contents of the entire package in which the article may be shall be liable to seizure and forfeiture on conviction thereof before any court of competent jurisdiction; but if the appraisers shall be of opinion that no such fraudulent intent existed, then the value of such article shall be added to the entry, and the duties thereon paid accordingly, and the same shall be delivered to the importer, agent, or consignee. Such forfeiture may, however, be remitted by the Secretary of the Treasury on the production of evidence satisfactory to him that no fraud was intended.

DECISIONS UNDER SECTION 2901, REVISED STATUTES.

Appraisement of Merchandise.—The provision of section 2901 of the United States Revised Statutes requiring that the collector should designate on each invoice of imported merchandise at least 1 package of every 10 packages for examination is directory and not mandatory, and a failure to comply strictly with this requirement does not in itself render invalid the examination or the appraisement of such merchandise.

While an appraisement of merchandise made without any inspection of the goods by the appraising officer is irregular and void, it is not necessary that every portion of the imported merchandise be separately examined, and an appraisement made upon an inspection of a fair representative sample or samples of such merchandise is valid.

In the holding of appraisements or reappraisements of merchandise the presumption is that the appraising officers discharge their duty by making a proper examination of the merchandise, and, in order to invalidate their action, the onus is on the importer to show the contrary.

While an importer has a right to be present after due notice, in order to present his views and evidence in regard to an appraisement or reappraisement, he can not insist on the right to remain throughout the proceedings and to be informed as to all the evidence under consideration, or to cross-examine the witnesses, as at a trial in open court, much of such testimony ordinarily being of a confidential character.—*T. D. 26690* (G. A. 6145).

Compliance with R. S. 2901 Not Mandatory.—R. S. 2901 was intended for the benefit of the Government, is not mandatory, and official acts are not

invalidated for want of strict compliance therewith.—*Erhardt v. Schroeder*, 155 U. S., 124, 125; *Origet v. Hedden*, 155 U. S., 228; *U. S. v. Ranlett & Stone*, 172 U. S., 133, 142.

Examination of Packages.—An importer whose goods, in several packages, were sent by the collector to the public store and there examined can not take advantage of the fact that the appraisers in making up their opinion did not examine every case, unless it also appears that they were directed by the collector to make such examination of all and failed to do so.—*Origet v. Hedden*, 155 U. S., 228, 239.

Examination on Reappraisalment.

EXAMINATION BY BOARD OF THREE GENERAL APPRAISERS REQUIRED.—The changes made in the law governing appraisements of merchandise at ports of entry, as these changes appear in sections 12 and 13, customs administrative act of 1890, do not warrant the inference that it is unnecessary in reappraisalment proceedings for a board of three general appraisers to examine the samples of the merchandise when reappraised.

SAMPLES IN PUBLIC STORES.—Packages or samples selected by the collector and deposited in public stores are to be deemed as under the immediate continuing control and in the continuing physical custody of the appraiser, the general appraiser, or Board of General Appraisers, respectively, before whom a case may be pending in which these samples have been selected and detached for the purpose of an examination or of inspection and appraisement.

EXAMINATION NECESSARY.—Irrespective of the particular designation of the official or officials to whom "a case" is submitted in proceedings to appraise merchandise, it can not be said "the case" has been examined when the exhibits or samples deposited as a part of the case have not been examined; and the statute is mandatory that on appraisement or reappraisalment the exhibits or samples shall be examined. *Erhardt v. Schroeder* (155 U. S., 124) and *U. S. v. Ranlett* (172 U. S., 132) distinguished.

WHEN IT APPEARS ALL SAMPLES WERE EXAMINED.—In the case at bar, it being fairly established by the evidence that the number of packages required by law were sent to the public stores for examination, and that these were in due course examined by the reappraisalment board, their finding must be here affirmed.—*Loeb & Schoenfeld v. U. S. (Ct. Cust. Appls.)*, T. D. 31479; (*G. A. 6738*) T. D. 28849 affirmed.

Examination of Imported Merchandise.—At all ports, excepting New York, at least 1 package of every invoice and 1 package at least of every 10 packages of merchandise must be designated by the collector to be opened, examined, and appraised as prescribed in section 2901, Revised Statutes, and the provisions of that statute can not be waived in any case. The exception in section 2939, Revised Statutes, empowering the Secretary of the Treasury to make special regulations in certain cases, authorizing the examination of a less number of packages, is limited or restricted to cases arising at the port of New York. Modification of article 828, Customs Regulations, 1892.—Dept. Order (T. D. 21246).

Merchant Appraiser's Duties.—Under R. S. 2930 the merchant appraiser must be a person familiar with the character and value of the goods, and under R. S. 2901 he must open, examine, and appraise the packages designated by the collector and order to be sent to the public stores for examination.

In a suit to recover the importer has a right to show that these provisions were not complied with.—*Oelberman v. Merritt*, 123 U. S., 356, 366; *Mustin v. Cadwalader*, id., 369.

MANDATORY PROVISIONS OF SECTIONS 2901 AND 2939, REVISED STATUTES.—Though there may have been a failure on the part of the collector strictly to comply with the provisions of sections 2901 and 2939, Revised Statutes, governing the special designation of merchandise for examination and appraisement, nevertheless the Board of General Appraisers would be in duty bound, the goods in question remaining subject to their control and open to their inspection and examination, to resort, on appeal, to the best means at hand for making an appraisement; and though it should appear that one package in ten was not in some instances examined by the board, there being sufficient samples of the merchandise before them and these having been examined, there would be accordingly such a substitute process as the law contemplates and permits.

EXAMINATION OF ONE IN TEN.—An irregularity in complying with the legal requirements as to the sufficiency of samples of goods before a board of reappraisement will be deemed to have been waived if the importer was present and made no objection to the irregularity. *Oelrichs & Co. v. U. S.* (2 Ct. Cust. Appls., 355; T. D. 32091).—*Harris v. U. S.* (Ct. Cust. Appls.), T. D. 32286; (G. A. 6502) T. D. 27784 and (Ab. 14010) T. D. 27801 affirmed.

Reappraisement—Samples.

Reviewing the decision in *Tilge & Co. v. U. S.* (T. D. 31507), the decision is adhered to. The court did not there hold an appraising officer had no jurisdiction to appraise any of the merchandise of a consignment unless he had examined the samples deposited at the public stores, nor did it hold that samples forming a part of the importation can not, when duly authenticated, be accepted by appraising officers for jurisdictional purposes. It was there held, however, that no process was permissible "other than the law provides"; and that while the law provides substitute processes, compliance with any of these was not averred in the case as presented for determination here, and the decision as rendered was based simply on noncompliance with the law's requirements. What would or would not constitute a proper waiver or stipulation to avoid the stricter operation of the statute will depend on the facts of record in the particular case.—*Tilge v. U. S.* (Ct. Cust. Appls.), T. D. 31676; T. D. 31507 (Ct. Cust. Appls.); petition for rehearing denied.

REAPPRAISEMENT ACCORDING TO SO-CALLED CONSULAR SAMPLES.—Where the goods in controversy had gone into commerce and had been there consumed, in reappraisement proceedings, on a failure to produce the samples of these goods selected and deposited at the public stores, it is not permissible for the Government to substitute consular samples forwarded according to a practice of the Treasury Department from the place of export abroad.

That samples selected by the collector at the port of entry and deposited at the public stores should be examined on a reappraisement, is a mandatory requirement of the law. *Loeb & Schoenfeld v. U. S.* (T. D. 31479).—*Tilge & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 31507; (Ab. 23354) T. D. 30645 reversed. Note T. D. 31676 (C. C. A.), supra.

BOND FOR DELIVERY OF UNEXAMINED PACKAGES.

SEC. 2899. No merchandise liable to be inspected or appraised shall be delivered from the custody of the officers of the customs until the same has been inspected or appraised, or until the packages sent to be inspected or appraised shall be found correctly and fairly invoiced and put up, and so reported to the collector. The collector may, however, at the request of the owner, importer, consignee, or agent, take bonds, with approved security, in double the estimated value of such merchandise, conditioned that it shall be delivered to the order of the collector at any time within ten days after the package sent to the public stores has been appraised and reported to the collector. If in the meantime any

package shall be opened without the consent of the collector or surveyor given in writing, and then in the presence of one of the inspectors of the customs, or if the package is not delivered to the order of the collector, according to the condition of the bond, the bond shall, in either case, be forfeited.

DECISIONS UNDER SECTION 2899, REVISED STATUTES.

Bond for Return of Unexamined Merchandise.

DAMAGES FOR BREACH.—In construing section 2899, Revised Statutes, authorizing the delivery to importers of unexamined packages of merchandise, under a bond to return the same unopened on demand of the collector of customs, the penalty fixed in the bond being double the value of the merchandise, *Held*, that it was the intention of the law to provide specific damages to be recovered upon the failure of the importer to so return the merchandise, the Government being under no necessity of showing any actual damage.

DEPARTURE FROM STATUTORY PROVISIONS.—Under section 2899, Revised Statutes, prescribing that when merchandise is delivered to importers without examination the collector of customs “may take bonds in double the estimated value of such merchandise,” such sum to be forfeited in case of breach of the bond, a collector took a bond which contained the less stringent condition that the importers might discharge the obligation by paying double the value of only the packages as to which the conditions of the bond might be broken. *Held*, that such a bond was permitted by the section.

MITIGATION OF PENALTY OF BOND.—Section 961, Revised Statutes, providing that “in all suits brought to recover the forfeiture annexed to any bond the court shall render judgment for the plaintiff to recover so much as is due according to equity,” does not have the effect of protecting importers from the enforcement of a bond given by them under section 2899, Revised Statutes, providing a specific penalty for their failure to return to the collector of customs merchandise delivered to them without examination.—*Dieckerhoff v. U. S.* (U. S.), T. D. 27366; T. D. 26040 (C. C. A.) reversed.

BOND FOR RETURN OF UNEXAMINED MERCHANDISE.—In construing section 2899, Revised Statutes, which provides that collectors of customs may deliver imported merchandise to the importer unexamined, under bond “in double the estimated value of such merchandise,” and that “if the package is not delivered to the order of the collector according to the condition of the bond the bond shall be forfeited,” *Held*, that the bond is not to be treated as fixing the amount of liquidated damages in case of its breach, but that its object is to protect the Government in the assessment, valuation, and collection of its duties by making good within the limit of said double value such damages as may have been sustained by reason of breach of its conditions, and in order to recover for such breach it is incumbent upon the Government to make proof of the damages actually incurred.—*Dieckerhoff v. U. S.* (C. C. A.), T. D. 26040. Note T. D. 27366, *supra*.

Action for Damages.—To support an action for damages for breach of a bond given by importers under section 2899, Revised Statutes, in which it is stipulated that packages delivered without examination shall be returned to the collector on demand made within 10 days after appraisal, it is not enough to aver that the importers did not return on demand; it should also appear that the demand was made within 10 days.—*U. S. v. Psaki* (C. C.), T. D. 31168.

Bonds for Return of Unexamined Packages.—Whether or not an entry indorsed on a bond for the return of unexamined packages, under article 357 of the General Regulations, should be considered as canceled when such entry has been closed by due liquidation without any breach of the conditions of the

bonds. An opinion from the Solicitor of the Treasury leads to the conclusion that the question should be decided in the affirmative.—Dept. Order (T. D. 10033).

Additional Duties.—Where an importer pays the duties estimated by the collector on several packages of merchandise and receives all but one of the packages, which is sent to the public stores for examination, and executes the usual bond for return thereof if required, payment of the additional duties on all the packages as returned by the appraiser, without which or a deposit thereof the importer could not, under article 358, Regulations, 1884, obtain possession of the examined packages, is not voluntary. Sustaining the circuit court.—*Erhardt v. Winter* (C. C. A.), 92 Fed. Rep., 918.

Nonimportation.

Merchandise the usefulness of which as a commercial commodity has been entirely destroyed and that has been condemned and destroyed as insanitary is not an article of merchandise of value imported into this country and can have no dutiable status.

PROCEDURE AS TO NONIMPORTATION.—Where an importer has removed in bond to his own warehouse a consignment of merchandise, and it is there found that more than 10 per cent of the consignment had been rendered in transit totally valueless he is not remitted as of course to proceeding alone under section 23 of the customs administrative act of 1890, but may seek his remedy as well by protest under section 14 of the same act.

GLACÉ FRUIT, WHEN A NONIMPORTATION.—The facts disclosing that 29 cases and 59 boxes of glacé fruit, more than 10 per cent of the entire consignment, were entered in a wholly worthless condition, there was no importation as to this portion of the merchandise, and the importer complying with all conditions as to recovery is entitled to the relief he demands.

BOND AND PENALTY.—The penalty of a bond given for the return of goods not examined by customs officials is not enforceable in a proceeding of this kind, the court declining to assume jurisdiction of questions arising out of the alleged breach of the conditions of such a bond.—*U. S. v. Habicht, Braun & Co.* (Ct. Cust. Appls.), T. D. 31031; T. D. 29768 (C. C.) affirmed and (G. A. 6700) T. D. 28651 reversed.

Where merchandise was so damaged by sea water on the voyage of importation as to be entirely valueless, there was nothing to be abandoned under section 23, customs administrative act of 1890.

The fact that there has been a breach of a bond given under section 2899, Revised Statutes, does not affect the right of the importer to an allowance for merchandise so damaged on the voyage of importation as to be entirely worthless. No different penalty is contemplated by said section than the damages stipulated in the bond.—*Habicht v. U. S.* (C. C.), T. D. 29768; (G. A. 6700) T. D. 28651 reversed.

ABANDONMENT.—Section 23 of the customs administrative act relative to abandonment applies only where the goods sought to be abandoned are of some value, and does not apply where they are totally destroyed or so entirely damaged as to be valueless. Duty is assessable only upon such merchandise as is actually brought within the limits of the United States and enters into the commerce of this country. Merchandise destroyed, or so totally damaged as to be valueless, before it is brought into the United States and enters into the commerce of this country is to be treated as a nonimportation and not dutiable.

BOND GIVEN UNDER SECTION 2899, REVISED STATUTES.—An importer gave a bond for the removal of goods under the provisions of section 2899, Revised

Statutes, the obligation of which is to hold the merchandise unopened for 10 days after the examination of public-store cases, or until permission to open the same is secured by him from the collector, and then to open them in the presence of a customs inspector. In violation of that bond, the importer opened the merchandise and discovered that it was totally destroyed by decay. *Held*, that the importation will not be treated as a nonimportation, for the reason that it has passed into the limits of the United States and entered into the commerce thereof.—T. D. 28651 (G. A. 6700).

Merchandise Not Arriving Nondutiable, Despite Violation of Bond Under Section 2899 of Revised Statutes.—Where goods do not arrive in this country so as to constitute a shortage or nonimportation, although not discovered until delivery to the importers, they are not liable to be assessed for duty, notwithstanding the fact that the merchandise may have been opened in violation of the terms of a bond given under section 2899 of the Revised Statutes.

Such bond must be enforced, when forfeited, by a separate procedure claiming damages for its breach.—T. D. 31673 (G. A. 7233).

Allowance for Nonimportation.—Where a shortage of goods is shown to have existed at the time of arrival in this country, the importer is not deprived of the right to claim an allowance by way of deduction for the same on the ground that the goods had been delivered to him by the collector under a penal bond prescribed by section 2899, Revised Statutes, and he had opened the package in violation of its conditions. The penalty for such violation is stipulated in the bond itself.—T. D. 30379 (G. A. 6984).

Sundays Included in "Ten Days."—In computing the 10 days within which the order of the collector for return of goods to the public stores must be served upon the importer, if the tenth day falls on Sunday that day can not be excluded, and the service on Monday following is not sufficient. (In this case the notice was mailed on Saturday, the 10 days expired on Sunday, and the notice was received by the importer on Monday. The collector refused to correct the classification because the goods were not returned within the 10 days.)—*Hermann v. U. S.* (C. C.), 66 Fed. Rep., 721.

ENTRY OF MERCHANDISE.

Sec. 2785. The owner or consignee of any merchandise on board of any such vessel, or, in case of his absence or sickness, his known agent or factor in his name, shall, within fifteen days after the report of the master to the collector of the district for which such merchandise shall be destined, make entry thereof in writing with the collector, and shall in such entry specify the name of the vessel and of her master, in which, and the port or place from which such merchandise was imported, the particular marks, numbers, denomination, and prime cost, including charges of each particular package or parcel whereof the entry shall consist, or, if in bulk, the quantity, quality, and prime cost, including charges thereof, particularly specifying the species of money in which the invoices thereof are made out. Such entry shall be subscribed by the person making it, if the owner or consignee, in his own name, or, if another person, in his name as agent or factor, for the owner or consignee. The person making such entry shall also produce to the collector and naval officer, if any, the original invoices of the merchandise, or other documents received in lieu thereof, or concerning the same, in the same state in which they were received, with the bills of lading for the same; which invoices shall be signed by the persons in the offices of the collector and naval officer who have compared and examined them.

DECISIONS UNDER SECTION 2785, REVISED STATUTES.

Entry Made Through Error.—Lumber was imported especially for export to South America. In issuing instructions to ship it from Canada to Ogdensburg

the party issuing such instructions omitted to state that the lumber should be forwarded in bond from Ogdensburg to the port of New York for immediate export. Through the omission the lumber was entered for consumption at the port of Ogdensburg and duties paid thereon. The lumber was thereafter actually exported as originally intended.

On this undisputed showing the Government received duties on merchandise which did not enter the country with the purpose of mingling with and becoming a part of its commerce, and to which it was not entitled, through error or mistake. The case falls within the rule followed in *G. A. 5877 (T. D. 25890)*.—*Ab. 25989 (T. D. 31727)*.

Certain lumber imported from Canada and accompanied by bill of lading showing it to be designed merely for transit through this country by way of Vanceboro and Bangor, Me., was by clerical mistake entered for consumption at Vanceboro, and was subsequently exported to its destination in South America from Bangor. *Held*, on the evidence to have been entered without authority and to be free of duty.—*T. D. 30876 (G. A. 7086)*.

Nonresident Consignee May Make Entry.—The Solicitor of the Treasury in his opinion finds no provision of law which expressly or impliedly prohibits the entry of goods by a nonresident consignee who appears in person at the port of entry.—*Dept. Order (T. D. 22478)*.

Entry After Expiration of One Year from Date of Importation.—Notwithstanding that the consignee intentionally allowed the goods to remain unclaimed for more than one year, the department sees no good reason for withholding the desired privilege.—*Dept. Order (T. D. 8542)*.

Entry of Imported Goods by a Foreign Corporation.—A power of attorney, filed by a foreign corporation which has complied with all the requirements of the laws of a State, may be accepted for customs purposes in the same manner as in the case of a domestic corporation.—*Dept. Order (T. D. 18852)*.

Entry at Frontier for Slight Value.—Small frontier importations valued at \$10 or less admitted without formal entry.—*Dept. Order (T. D. 29146)*.

Indelible Pencils.—Entries made out with indelible pencils and use of carbons for copies may be accepted.—*Dept. Order (T. D. 28704)*.

ENTRY OF MERCHANDISE BY APPRAISEMENT.

SEC. 2788. Where the particulars of any merchandise are unknown, in lieu of the entry prescribed by section twenty-seven hundred and eighty-five, an entry thereof shall be made and received according to the circumstances of the case, the party making the same declaring upon oath all that he knows or believes concerning the quality and particulars of the merchandise, and that he has no other knowledge or information concerning the same.

SEC. 2926. All merchandise of which incomplete entry has been made, or an entry without the specification of particulars, either for want of the original invoice or for any other cause, or which has received damage during the voyage, shall be conveyed to some warehouse or storehouse, to be designated by the collector, in the parcels or packages containing the same, there to remain with due and reasonable care, at the expense and risk of the owner or consignee, under the care of some proper officer, until the particulars, cost, or value, as the case may require, shall have been ascertained either by the exhibition of the original invoice thereof or by appraisement, at the option of the owner, importer, or consignee, and until the duties thereon shall have been paid, or secured to be paid, and a permit granted by the collector for the delivery thereof.

DECISIONS UNDER SECTIONS 2788 AND 2926, REVISED STATUTES.

Modification of Department's Circular No. 86 (T. D. 22280).—What is understood as an appraisement order is an order issued by the collector for the

appraisement of merchandise in advance of the entry and constitutes a marked exception to the general rule. Such exceptional orders are issued only by the collector or one of his deputies to cover importations of purely personal effects, not merchandise nor intended for sale, and where the value is small, and in these cases the appraisement is followed by an informal duty entry or by free entry, as the case may require.

Applications for entries by appraisement of personal effects, household effects, etc., may be granted when the conditions warrant it, and the circular referred to is modified accordingly.—Dept. Order (T. D. 22385).

Collector's Charges.—Because of the absence of an invoice, the collector on liquidation charged, under section 2926, Revised Statutes, a certain sum for cartage, labor, and storage incidental to the removal and custody of the importation. The cartage was paid for by the Government, while the other services were rendered by Government employees. The entry was confessedly incomplete, an invoice being necessary, and so it was within the authority of the collector under the section cited to cause the merchandise to be removed at the expense of the owners to a warehouse or storehouse, there to remain until due appraisement was had or, at the option of the owners, the original invoice produced; and this is true though there was only one case of merchandise, valued at less than \$100. *Kennedy v. Magone* (158 U. S., 212).—*Davies, Turner & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 33036; (G. A. Ab. 27999) T. D. 32346 affirmed.

Examination of Packages of Goods.—Where certified or pro forma invoice is lacking in proper specification of goods covered thereby or is incomplete, or whenever fraud or undervaluation is suspected, all packages should be ordered to public store, at expense and risk of owner or consignee, for examination and verification.—Dept. Order (T. D. 19634).

Drayage and Storage Charges on Undervalued Merchandise.—An entry of imported merchandise, made in good faith, and upon a straight invoice—i. e., an invoice describing the contents of each and every package, giving its value and all particulars (both invoice and entry complying with all formal requirements of law)—is not made an incomplete entry or an entry without the specification of particulars, within the meaning of section 2926 of the Revised Statutes, by an undervaluation of the merchandise in said invoice and entry. *Held*, accordingly, that certain charges for drayage and storage, imposed under the provisions of said section 2926, Revised Statutes, on undervalued merchandise so entered, were illegally exacted.—T. D. 22111 (G. A. 4684).

Expense of Drayage from G. O. Warehouse to Appraiser's Store.—Authority is given to the collector to designate the warehouse or storehouse to which the merchandise shall be conveyed, and in this case, having designated such place to be the general-order store, any transfer of the goods thereafter, at the expense of the importer, to more commodious or extensive quarters, for the purpose of examination and appraisement, does not appear to be warranted by law or the regulations.—Dept. Order (T. D. 9849).

Sample Packages—Fees.

POWERS OF THE COLLECTOR.—The collector of customs has no arbitrary or discretionary power and can not collect or receive from an importer, or exact or require an importer to pay to him, any sum of money whatever without express authority of law.

FEES ABOLISHED.—All fees connected with imports were abolished by section 22, customs administrative act of 1890.

SECTION 2926, REVISED STATUTES, CONSTRUED.—Section 2926, Revised Statutes, simply authorized the collector to store merchandise at the expense and risk

of the owner or consignee. It contemplates that all charges which an importer is required to pay under its provisions are in the nature of reimbursements to the Government.

FEES ON SAMPLE PACKAGES.—A charge which an importer is required to pay upon delivery to him of a package of samples containing goods of no commercial value and nondutiable, *Held*, under the facts of the case, to be a fee and not a storage charge under section 2926, Revised Statutes.—T. D. 29249 (G. A. 6800).

Charges—Storage—Cartage.

POWERS OF THE COLLECTOR.—The collector has no authority whatever to make a charge for services rendered unless the same is authorized by law. *Acker, Merrill & Condit's case*, G. A. 5689 (T. D. 25331); *American Express Co.'s case*, G. A. 6552 (T. D. 27962).

CHARGE FOR UNLADING VESSELS AT SPECIALLY DESIGNATED PLACE.—The act of June 26, 1884 (23 Stat. L., 60), authorizes the collector to require the importer to pay all the extraordinary expenses incurred in unloading a vessel at a specially designated place within the collection district. Only such expenses may be charged to the importer as would not have been incurred if the merchandise had been unladen in the ordinary way. *Snow's case*, G. A. 6800 (T. D. 29249).

DISCRETION OF THE COLLECTOR.—Unless the evidence shows that it has been grossly abused, this board will not review the exercise of the discretion of the collector in determining what will reimburse the Government for the extraordinary privilege granted to the importer of articles in bulk.

STORAGE CHARGES.—Under section 2926, Revised Statutes, the collector is authorized to make a charge for storage where incomplete entries are made.

MERCHANDISE STORED IN GOVERNMENT BUILDING.—While the language "at the expense of the owner" in section 2926, Revised Statutes, contemplates that the Government shall only collect from the importer sufficient for reimbursement for storage, it does not necessarily follow that it shall be reimbursement alone for moneys directly and immediately paid out. If the Government provides a building of its own, it can charge such sum as will reasonably reimburse it in the expense of maintaining such storehouse. *Kennedy v. Magone* (158 U. S., 212).

EXCESSIVE STORAGE CHARGES.—Under section 2965, Revised Statutes, the charge which a collector may make for unclaimed goods sent to public stores is limited by the following language, "not to exceed in any case the regular rates for such objects at the port in question." A charge which appears from the testimony to be an arbitrary one and in excess of the regular rate at the port of entry, *Held* to be in violation of the law.

CONSTRUCTIVE CHARGES.—To charge an importer for an expense incurred in removing his merchandise from the wharf to the public stores the expense must have been an actual one. Where an automobile was transferred under its own power to the public stores by the owner, or some one acting for him, and the Government was put to no expense whatever, the collector has no authority or power to make charges for cartage.—T. D. 31271 (G. A. 7163).

EQUIPMENT AND REPAIRS TO AMERICAN VESSELS.

SEC. 3114. The equipments, or any part thereof, including boats, purchased for, or the expenses of repairs made in a foreign country upon a vessel enrolled and licensed under the laws of the United States to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost

thereof in such foreign country; and if the owner or master of such vessel shall willfully and knowingly neglect or fail to report, make entry, and pay duties as herein required, such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited.

DECISIONS UNDER SECTION 3114, REVISED STATUTES.

Docking Charges.

NONDUTIABILITY OF DOCKING CHARGES.—The expense of dry docking included in the cost of repairs made in foreign ports on vessels enrolled and licensed under the laws of the United States to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, is not an element of dutiable value.

JURISDICTION OF BOARD OF GENERAL APPRAISERS.—Under section 14, customs administrative act of June 10, 1890, giving the Board of General Appraisers jurisdiction to review decisions of collectors of customs "as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage)," the board has jurisdiction to review the action of a collector in assessing duties on the cost of repairs of vessels under section 3114, Revised Statutes.—T. D. 27154 (G. A. 6295). Note T. D. 12305 (G. A. 1077), *infra*.

The cost of docking American vessels in foreign ports dutiable under section 3114 of the Revised Statutes as part of the repairs. T. D. 23069 adhered to.—Dept. Order (T. D. 26303).

When an American vessel engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States is docked in a Canadian port and any repairs are made thereto, the cost of docking is dutiable as an expense incident to such repairs.—Dept. Order (T. D. 23069).

Dutiable and Nondutiable Expenses.—Certain items incident to the laying up of a vessel for the winter in a foreign port were assessed for duty by the collector under section 3114, Revised Statutes, at 50 per cent. The protestants claim that the items "general outfitting," "fitting out engine," "scrubbing," and "laying up" are not equipment or expense of repairs. *Held*, that from the testimony in this case the items "general outfitting" and "fitting out engine" are properly assessed by the collector; that from the said testimony and the rule of construction laid down by this board in Jules Matagrín's case, G. A. 7015 (T. D. 30571), adopted by the Court of Customs Appeals in *Wright & Graham Co. et al. v. United States* (6 Ct. Cust. Appls., 528; T. D. 36147), the items "scrubbing" and "laying up" are not covered by section 3114, and free of duty.—T. D. 36685 (G. A. 7959).

Expenses for Repairs—Repainting Vessel.—The expenses incurred in a foreign port in repainting an American vessel, and for fittings, work of carpenters and mechanics on the same, are expenses for repair within the meaning of section 3114 of the Revised Statutes, and dutiable, as therein provided, at 50 per cent ad valorem on the cost of repairs in such foreign country.—T. D. 21670 (G. A. 4575).

Remission of Duty.—An American vessel engaged in trade between Cape Vincent, United States, and Kingston, Canada, was necessarily repaired at Kingston. The cost of the repairs was dutiable at 50 per cent, and if the owner has a right to remission it is a matter for the Secretary under Revised Statutes 3115.—T. D. 12305 (G. A. 1077).

Repairs Made While Laid Up in Winter Quarters.—Vessel having gone into winter quarters at Kingston, Ontario, and her machinery taken down, was found thereupon to require certain repairs. *Held*, that R. S. 3115 is not applicable since vessel was not required by stress of weather or other casualty to put into port and repair “while in the regular course of her voyage.”—Dept. Order (T. D. 9517).

American Dredge Repaired Abroad.—American dredge, in foreign waters for about four years, had certain repairs made and an anchor-hoisting device installed, in which condition it was held dutiable as an entirety, but would have been admitted to free entry had the hoisting apparatus been detached.—Dept. Order (T. D. 9341).

Repairs in a Foreign Port to a United States Registered Vessel Engaged in the Foreign and Coasting Trade by Sea.—Cost of repairs made to vessel which had been run ashore during gale to prevent her sinking held not dutiable under section 3114.—Dept. Order (T. D. 7774).

LANDING GOODS WITHOUT A PERMIT.

SEC. 2867. If after the arrival of any vessel laden with merchandise and bound to the United States, within the limits of any collection district, or within four leagues of the coast, any part of the cargo of such vessel shall be unladen, for any purpose whatever, before such vessel has come to the proper place for the discharge of her cargo, or some part thereof, and has been there duly authorized by the proper officer of the customs to unlade the same, the master of such vessel and the mate, or other person next in command, shall respectively be liable to a penalty of \$1,000 for each such offense, and the merchandise so unladen shall be forfeited, except in case of some unavoidable accident, necessity, or distress of weather. In case of such unavoidable accident, necessity, or distress, the master of such vessel shall give notice to, and, together with two or more of the officers or marines on board such vessel, of whom the mate or other person next in command shall be one, shall make proof upon oath before the collector, or other chief officer of the customs of the district, within the limits of which such accident, necessity, or distress happened, or before the collector, or other chief officer of the collection district, within the limits of which such vessel shall first afterward arrive, if the accident, necessity, or distress happened not within the limits of any district, but within four leagues of the coast of the United States. The collector, or other chief officer, is hereby authorized and required to administer such oath.

SEC. 2872. Except as authorized by the preceding section, no merchandise brought in any vessel from any foreign port shall be unladen or delivered from such vessel within the United States but in open day—that is to say, between the rising and the setting of the sun—except by special license from the collector of the port, and naval officer of the same, where there is one, for that purpose, nor at any time without a permit from the collector, and naval officer, if any, for such unloading or delivery.

SEC. 2873. If any merchandise shall be unladen or delivered from any vessel, contrary to the preceding section, the master of such vessel, and every other person who shall knowingly be concerned, or aiding therein, or in removing, storing, or otherwise securing such merchandise, shall each be liable to a penalty of four hundred dollars for each offense, and shall be disabled from holding any office of trust or profit under the United States, for a term not exceeding seven years; and the collector of the district shall advertise the name of such person in a newspaper printed in the State in which he resides, within twenty days after each respective conviction.

SEC. 2874. All merchandise, so unladen or delivered contrary to the provisions of section twenty-eight hundred and seventy-two, shall become forfeited, and may be seized by any of the officers of the customs; and where the value thereof, according to the highest market price of the same, at the port or district where landed, shall amount to four hundred dollars, the vessel, tackle, apparel, and furniture shall be subject to like forfeiture and seizure.

DECISIONS UNDER SECTIONS 2867, 2872, 2873, AND 2874, REVISED STATUTES.

Coastwise Steamer.—A vessel engaged in the coasting trade and having goods on board which have not paid duties is not within the purview of this section as to landing foreign goods without a permit.—*Jackson v. U. S.*, 4 Mason, 186; 13 Fed. Cas., 254.

Defense for Noncompliance with Regulations.—It is good defense that the party has been prevented by inevitable accident, necessity, or distress, from complying with the requirements of sections 50 and 92, act of 1790 (secs. 2872 and 2873, R. S.). But such defense is not allowable under a plea which simply puts in issue a denial of the facts constituting a forfeiture within those sections.—*U. S. v. Hayward*, 2 Gall., 485; 26 Fed. Cas., 240.

Equipment of Vessel.—Where a vessel took on board at New Orleans a chain cable smuggled by another vessel, sections 27 and 28, act of 1799, are not applicable; but the case is covered by sections 50 and 69, which provide a penalty for unloading goods without a permit or license, or for knowingly receiving or concealing goods liable to seizure. But the vessel receiving smuggled goods is not liable to forfeiture.—*Clark v. Protection Insurance Co.*, 1 Story, 109; 5 Fed. Cas., 909.

Appurtenances or equipments of a ship, as a chain cable or other articles, purchased bona fide for the use of the ship are not "goods, wares, or merchandise" within the meaning of section 50, act of 1799, which requires a permit before they are landed.—*U. S. v. Chain Cable*, 2 Sumn., 362; 25 Fed. Cas., 391.

Forfeiture.—To create a forfeiture for landing goods without a permit the goods must come from one cargo and be landed from the same vessel, but not at the same time.

Allegations in the libel as to the goods and their value bind the Government.

A forfeiture is not created under section 50, act of 1799, as modified by the act of 1827, prohibiting the importation of brandy in casks of less than 15 gallons capacity, by a seaman landing about 2 gallons, all that remained of a purchase in a foreign port, taken on board for his own use on his way home.—*The Sarah Bernice*, 1 Hask., 78; 21 Fed. Cas., 438.

Under section 50, act of 1799, if foreign goods exceeding \$400 in value are unladen without a permit, the vessel is forfeited from which they were unladen, although they were not actually brought in such vessel from a foreign port, but had been transhipped into her on the homeward voyage.—*The Harmony*, 1 Gall., 123; 11 Fed. Cas., 556.

A vessel arriving from a foreign port is forfeited by landing goods in any port of the United States, after her arriving in her port of destination, without a permit from the collector.—*The John C. Brooks* (3 Ware, 273), 13 Fed. Cas., 663.

Free Goods, Permit Required.—Merchandise free of duty can not be lawfully unladen and delivered without a permit from the collector and naval officer, if any, for such unloading and delivery.

The permit required by section 50 is the same as the one mentioned in section 49, act of 1799, and that manifestly is a written permit.

If Congress had intended that goods not dutiable should be unladen and delivered without a permit, evidence of such intention would be found in some part of the act. None such is found.

If goods (mackerel) were the property of an American citizen, taken on board an American vessel at a foreign port and consigned to American con-

signees, were landed at a foreign port for transshipment to the American port, were caught in an American vessel by American fishermen and shipped to the American port in the American vessel, still they could not be unladen at the American port without a permit in writing.

Innocence of intention can not, any more than ignorance of the law, afford a defense to the master or owner of a vessel for a violation of the prohibition contained in section 50, act of 1799.—*U. S. v. The Sarah B. Harris*, 4 Cliff., 147; 12 Int. Rev. Rec., 54; 27 Fed. Cas., 954.

Lightering and Relanding Goods Intended for Exportation.—Goods on board a ship which had been entered for exportation under the act of 1799, but for which no bond had been given under section 81 and no debenture issued, were put on board a lighter alongside the ship. They were seized as forfeited under section 82, act of 1799 (now R. S. 3049), as having been relanded. A verdict in favor of the Government having been directed, in a suit brought to enforce the forfeiture the claimant made a motion for a new trial. *Held*, that the discharge of the goods into the lighter amounted to a landing of them within the meaning of section 82 (R. S. 3049).

Evidence that the claimant caused the goods to be relanded simply to correct a mistake which had arisen among merchants, whereby he had been led to enter for export a different quality of goods from that intended to be exported, affords no defense.

An intent to defraud the Government is not required for a forfeiture of goods relanded contrary to section 82, act of 1799 (R. S. 3049).—2,000 Tin Cans, 7 Ben., 34; 24 Fed. Cas., 454.

Lightering is Not Unlading.—Discharge of goods into lighters is not an unlading under the statute. After such discharge by general order consignee should be allowed to make a post entry of goods not on the manifest.—*U. S. v. The Express*, 21 Law Rep., 41; 25 Fed. Cas., 1035.

Merchandise Landed as Baggage.—On the arrival of the steamship at her pier or dock at Hoboken, N. J., certain packages were, without a permit or the knowledge of the customs inspectors, unladen by her officers as baggage of steerage passengers. The customs officers having there examined the packages and found them to contain articles subject to duty so marked them for identification and sent them to Castle Garden, New York City, for further examination. Upon such further examination at that place and the failure to pay the duties the packages were sent to the seizure room at the customhouse. *Held*, that the seizure was made at Castle Garden and not at the pier at Hoboken. It being fully proved that the packages were so unladen, the court below did not err in directing a verdict condemning them for a violation of section 50, act of 1799.—*Four Packages v. U. S.*, 97 U. S., 404.

Opium Temporarily Unladen.—Goods, of whatever growth or manufacture, brought from a foreign port or place and landed at a port or place within the United States without a permit are forfeited to the United States.

If opium was shipped from San Francisco via the foreign port of Victoria to Portland, and while the ship was lying at Victoria the shipper of the opium should cause it to be taken ashore and placed in a house in Victoria for even a few hours, or less time, and then cause it to be reladen upon the ship and brought thence to Portland, such opium would be brought from a foreign port and liable to become forfeited without a permit.—10 Cases of Opium, 1 Deady, 62; 23 Fed. Cas., 840.

Permit Must be in Writing.—A verbal assent by the customs officers to the landing of goods is not a compliance with section 50, act of 1799.

Such assent will not save a vessel from forfeiture for landing goods without a permit.

The permit must be in writing.

A permit obtained by fraud is not a permit.—*The Sarah B. Harris*, 1 Hask., 52; 21 Fed. Cas., 441.

Possession of Smuggled Goods.—Where a person had in store and sold cigars which he seemed to admit were known to him to have been smuggled, it is competent for the jury, unless he offers rebutting evidence, to infer from such admissions both that they had been landed without license from the collector, and that he knew it, and was keeping or storing them with such knowledge. This constitutes one offense under the act of 1799, though it is another but distinct offense to land merchandise without license, or to assist in doing it.

The remedy for the penalty incurred may be information or debt.—*Walsh v. U. S.*, 29 Fed. Cas., 107.

Salt on Fishing Vessel.—The carrying of salt by a fishing vessel to the Bay of Chaleur and bringing the same to the port of departure, and there landing the same, is not bringing the same from any foreign port or place in violation of section 50, act of 1799, even though the vessel touched at a foreign port near the Bay of Chaleur for wood and water.—*The E. K. Dresser*, 2 Hask., 349; 8 Fed. Cas., 398.

Scope of Section 2867, Revised Statutes.—The penalty of section 50 of the collection law of March 2, 1799 (1 Stat. L., 665), which requires a permit for the landing of goods imported, applies to goods the importation of which was prohibited by law.—*Harford v. U. S.*, 8 Cranch, 109.

Shipment of Smuggled Goods.—The shipment of goods of foreign manufacture from Boston to Baltimore, without certificates of the payment of duties, consigned to fictitious names, the marks of the packages having been changed, taken together constitute probable cause for prosecution under section 50, act of 1799.—*Locke v. U. S.*, 7 Cranch, 339.

Silver Dollars are goods, wares, and merchandise within section 50, act of 1799, for the landing of which a permit from the customhouse is necessary.—*The Elizabeth & Jane*, 2 Mason, 407; 8 Fed. Cas., 473.

Smuggling—Evidence of Seamen.—Seamen engaged on board a steamship were arrested while engaged in smuggling cigars, which they had brought into the port on board her; the seamen were promised immunity, and an information having been filed against the steamship under section 50, act of 1799, the evidence of the seamen was relied on to secure the forfeiture. It appeared that neither the owners nor the master nor any officer of the ship was engaged in or knew of the smuggling. *Held*, that the evidence of the men was sufficient to sustain the action, and the decree required by the statute must follow, but that the course pursued in the matter by the Government officials was open to severe criticism. The district attorney was recommended to present the facts to the Attorney General before the signature of the decree.—*The Cleopatra*, 5 Ben., 290; 14 Int. Rev. Rec., 29; 5 Fed. Cas., 1029.

Smuggling—Evidence Against Vessel.—Where, in an action against a vessel for an attempt to smuggle foreign goods liable to customs duties, there is an irreconcilable conflict between the evidence given, and the case made out by the Government witnesses shows: First, concealment on the part of the captain and mate that the suspected vessel had come in through the pass where, on an island in the pass, the smuggled goods were found, instead of coming in by the main channel; second, prevarications and misrepresentations excusing the

fact that she had no boarding officer aboard; third, absence of the yawl and all of the crew on the night of the seizure of the goods, together with finding on the yawl mud and grass similar to that where the goods were found; fourth, a spliced oar, produced in court, and found at the place of the goods, which a witness identifies as the same that he saw the day previous on board and belonging to the vessel's yawl; fifth, finding on board the vessel after seizure goods of the same brand in small quantity in the possession of the captain, with other circumstances, are sufficient to warrant the district court in rendering a judgment of condemnation, and such judgment will be affirmed.—U. S. v. *The Henrietta Esch*, 12 Fed. Rep., 483.

Smuggling—Evidence Against Master.—The Government assumes no obligation toward shipowners to prevent fraudulent discharges of cargo, and the liability of the vessel is the same whether the officers of the customs do or do not prevent such discharges.

Libel for smuggling cigars: One Albreu, who owned the cigars, testified that the captain of the bark in Habana had made an agreement to smuggle cigars for him; that he sent the cigars from Habana to Matanzas, where the bark was lying, and received a letter from the captain saying they were shipped; that he then came to New York, and after the arrival of the bark in New York received his cigars, which were brought him by a carman, and paid the captain the agreed freight. It also appeared in evidence that on the seizure of the cigars Albreu's papers were also seized, among which were the invoices of the cigars from Habana to Matanzas and the letter of the captain. The captain denied that the cigars were ever on board the vessel and otherwise contradicted Albreu, but gave no satisfactory explanation of the letter. Some other testimony was given contradicting some parts of Albreu's story. His character for truth was seriously impeached. *Held*, that the evidence sufficiently sustained the charge against the vessel and that she must be forfeited.—*The John Griffin*, 4 Ben., 19; 11 Int. Rev. Rec., 63; 13 Fed. Cas., 680; reversed by the circuit court (case not reported), but sustained by the Supreme Court, 15 Wall., 29.

Smuggling—Penalty Falls on Officer in Command at Time.—Where 77 packages of cigars were secretly lowered, for the purposes of smuggling, from the bows of the steamer at 2 o'clock a. m., while she lay at anchor at lower quarantine, New York Harbor, while the master was absent from the ship, he having gone the day previous to the New York customhouse, 15 miles distant, to make entry of the arrival of the vessel, as he was bound to do, *Held*, that though the penalty of \$400 was incurred, the suit should have been against the person in actual command of the vessel at the time, and not against the absent master, and that the latter was not liable.

Sections 2873 and 2768, Revised Statutes, are to be construed together as the equivalent of section 50, act of 1799, and as imposing only one penalty, viz, a penalty either upon the master, or if he be not in command at the time, then upon the person in command of the vessel.

In an action for a penalty against a master for unlading goods without a permit, section 16, act of June 22, 1874, requires only that the intent with which the acts were done by the persons who committed them should be submitted to the jury, not the intent of the master.

R. S. 2873 is to be interpreted and applied according to its intention, viz, to impose vigilance in preventing unlading without a permit upon the persons having command; and it is not to be applied in cases evidently outside of the statute, such as derelict or salvaged goods, or goods unladen in case of accident to save them from loss, nor to cases of unlading by a superior attacking force, nor in like manner where it is affirmatively shown that it could not by any

practicable means be prevented by the master or person in command.—U. S. v. Curtis, 16 Fed. Rep., 184.

Stranded Vessel.—A vessel which has been driven ashore by stress of weather has not "arrived" within the limits of the collection district within the meaning of this section, and the unloading of her cargo without authority does not subject it to forfeiture.

The failure to give notice of the contingency which makes such unloading necessary does not authorize a forfeiture of the cargo.—The Cargo Ex *Lady Essex* (D. C.), 39 Fed. Rep., 765.

Transshipment of Cargo.—The transshipment of a cargo from one vessel to another while lying at a wharf in port is an unloading and delivery within the meaning of section 50, act of 1799.—The *Fame*, 1 Brown Adm., 42; 8 Fed. Cas., 982.

Unloading at Intermediate Port.—Goods landed without a permit from the proper collector and naval officer, if any, are subject to forfeiture.

It is no defense that the unloading was without the knowledge or consent of the consignee or owner; that it was at an intermediate port and not at the port of destination; and that it was an unlawful act on the part of the master. The forfeiture attaches upon the unlawful unloading, wherever that may be.

The fact that the goods were the production of the United States and simply transported through a foreign country, being shipped from Portland, Me., to Chicago through Canada on the Grand Trunk Railway, and were exempt from duty, and that all the laws and regulations relating to transit had been strictly complied with, does not remove the necessity of procuring a permit.—U. S. v. 20 Cases of Matches (2 Biss., 47; 10 Int. Rev. Rec., 95; 2 Am. Law T. Rep. U. S. Cts., 48; 1 Chi. Leg. News, 145), 28 Fed. Cas., 242.

Section 50, act of 1799, applies to all cases of unloading without a permit in any port or place within any collection district, whether such port or place be the port originally intended for the port of discharge of the cargo or not.—The *Industry*, 1 Gall., 114; 13 Fed. Cas., 35.

Vessel Subject to Penalty.—Whenever a vessel, or the owner or master of a vessel, has become subject to a penalty for a violation of the revenue laws, such vessel shall be holden for the payment of such penalty and be seized and proceeded against summarily.

The act of February 8, 1871, provides that no vessel shall be subject to seizure or forfeiture as above unless it shall appear that the master at the time of the alleged illegal act was a consenting party or privy thereto.—The *Saratoga*, 15 Fed. Rep., 382.

LIENS.

Section 2981, Revised Statutes, as Amended by an Act of Congress, Approved May 21, 1896.

AN ACT To amend section twenty-nine hundred and eighty-one of the Revised Statutes, as amended by the Act of June tenth, eighteen hundred and eighty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-nine hundred and eighty-one of the Revised Statutes be amended so as to read as follows:

"Sec. 2981. That whenever the collector of the port of entry of the vessel, or other proper officer of the customs, shall be duly notified in writing of the existence of a lien for freight, charges, or contribution in general average upon imported goods, wares, or merchandise in his custody, he shall, before delivering such goods, wares, or merchandise to the importer, owner, or consignee thereof for consumption, or to any vessel or vehicle for transportation or exportation, give seasonable notice to the party or parties claiming the lien; and the possession by the officers of customs shall not affect the discharge of such

lien, under such regulations as the Secretary of the Treasury may prescribe; and such officers shall refuse the delivery of such merchandise from any public or bonded warehouse or other place in which the same shall be deposited until proof to his satisfaction shall be produced that the freight, charges, or contribution in general average thereon has been paid or secured; but the rights of the United States shall not be prejudiced thereby, nor shall the United States or its officers be in any manner liable for losses consequent upon such refusal to deliver. If merchandise so subject to a lien, regarding which notice has been filed, shall be forfeited to the United States and sold, the freight, charges, or contribution in general average due thereon shall be paid from the proceeds of such sale in the same manner as other charges and expenses authorized by law to be paid therefrom are paid."

NOTE.—The above act applies solely to goods, wares, and merchandise which are actually in the custody of "the collector or other proper officer of the customs," and, in order that there may be uniformity in the proceedings, the department deems it proper to set forth the nature of the "custody" which is specified in the act. Imported goods arrive in this country in the immediate custody of the owner or agent of the vessel or vehicle of importation, and are continued in such custody until the chief officer of customs takes possession of the goods, or until the owner or agent of the vessel has made lawful delivery of them to the consignee under a permit from the collector. The collector or other chief officer takes such possession under the provisions of section 2880 of the Revised Statutes by some appropriate order, such as a "general order" or a special order to send unclaimed goods to a bonded warehouse, or an order to send bonded goods to the designated warehouse, or an order to deliver bonded goods to the surveyor for transportation or exportation.

In order to maintain due restraint over the disposition of the cargo an inspector of customs is assigned to the vessel or vehicle of importation, who remains on board until the cargo has been lawfully discharged, but the agent or owner of the vessel or vehicle of importation is not relieved of the responsibility for the safe keeping of the goods until such discharge has been made. The supervision and restraint by the customs inspectors is relinquished whenever they are directed by the collector to permit the delivery of the goods to the lawful representative of the consignee. Whatever may be the meaning of the words "customs custody," used independently, a reasonable construction of the act in question would seem to limit these words as indicated above. Actual customs custody in the meaning of this act begins, therefore, whenever the goods are removed from the possession of the owner or agent of the importing vessel by customs officers by virtue of an order of the collector.

The department construes the act of May 21, 1896, as having no reference to goods for which entries for consumption have been made, because such goods (except packages ordered for examination) are delivered directly to the consignee by the owner or agent of the vessel. It applies solely to goods landed under an order of the collector and surrendered to his custody for the purposes above set forth.—Dept. Order (T. D. 17444).

DECISIONS UNDER SECTION 2981, REVISED STATUTES.

Liens for Freight, etc.—The provisions of the act of May 21, 1896, amending section 2981, Revised Statutes (29 Stat. L., 129), relating to liens for freight, charges, or contributions in general average upon imported goods, is in nowise affected by section 10 of the Louisiana Purchase Exposition act of March 3, 1901. As all articles imported for exhibition under that act are constructively in customs custody, the provisions of said act of May 21, 1896, will be enforced before permission shall be granted to remove said articles from the exposition premises for the purpose of consumption, transportation, or exportation.—Dept. Order (T. D. 25587).

Customs Officers Not Authorized to Collect Freight Charges.—A collector of customs is not authorized by the act of 1880 to collect the freight upon the transported goods or to receive it for the lien holder, and if a deputy collector who acts as cashier for the collector does so collect or receive the freight his act is an unofficial act which entails no official responsibility upon the collector, his superior.—*Cleveland, Columbus, etc., R. R. v. McClung*, 119 U. S., 454.

Merchandise in Transit.—Liens for freight under section 2981, Revised Statutes, as amended by section 10 of the act of June 10, 1880, allowed on imported merchandise in transit through the United States.—Dept. Order (T. D. 15066).

Discharge of Freight Liens.—Under act of May 21, 1896 (29 U. S. Stat. L., ch. 217, p. 129), amendatory of section 2981, Revised Statutes, and act of June 10, 1880, it is for chief officers of the customs primarily to decide whether a freight lien is satisfactorily secured.

Where there is a controversy between the consignee and the carrier respecting the validity of the lien, such officers of the customs may deliver imported merchandise, against which a freight lien has been filed, to the consignee upon the deposit with them by the latter of a good and sufficient bond conditioned to pay all freight charges that may ultimately be found to be due or adjudged to be due in any court of competent jurisdiction, after proof has been made before said officers that the same bond was first tendered to the carrier by the consignee and refused by the carrier, and that said bond is adequate to secure the carrier. *Wyman v. Lancaster et al.* (32 Fed. Rep., 720) cited and followed.

If it should be deemed necessary for their security, chief officers of the customs may, in addition, exact a bond of indemnity running to themselves to save them harmless from any personal liability which might otherwise accrue as the result of any litigation between the consignee and the carrier.—Dept. Order (T. D. 23412). Note T. D. 25587.

Lien for Freight Charges on Merchandise in Transit.—The provision of law (sec. 10, act June 10, 1880) authorizing the detention by the collector of customs of the goods in such cases "until proof to his satisfaction shall be produced that the freight thereon has been paid or secured," does not specify the kind of proof required, or fix the responsibility for the delivery of the goods on insufficient proof, but the department is of opinion that this privilege granted by law to transporting agents for their convenience in collecting charges for freight does not impose any responsibility upon the Government or its officers.—Dept. Order (T. D. 14793).

Extent of the Carriers' Lien—Purchase Price Advanced by Carrier.—The department has given careful consideration to the request for a reversal of its decision (T. D. 22596) that purchase money advanced by an agent at a foreign port to the shipper of merchandise destined for the United States is not a proper subject of lien under section 2981 of the Revised Statutes and article 431 of the Customs Regulations of 1890.

Under the above law and decisions carriers have a lien upon imported merchandise carried by them and in customs custody for all charges incident to the transportation of the merchandise, including charges of prior carriers paid by them, and for contributions in general average, but not for the purchase price, whether advanced or to be collected, nor other claims not connected with the carriage of the merchandise.—Dept. Order (T. D. 22683).

Carrier's Lien for Duties Advanced.—*Held* that the lien of the United States for duties on merchandise passes to the carrier when the latter pays the duty on merchandise in order to gain possession thereof and forward it to its destination.—*Wabash Railroad Co. v. Pearce* (192 U. S., 179), T. D. 25122.

"Shipper's C. O. D." Not a Proper Subject of Lien.—It is a growing practice for express companies to file liens on what they call C. O. D. packages which not only include freight and other charges but also the value of the merchandise. The "shipper's C. O. D." (i. e., the purchase price) is not a proper subject of lien under section 2981 of the Revised Statutes as amended by the act of May 21, 1896.—Dept. Order (T. D. 22610).

Demurrage a Subject of Lien.—A lien for demurrage or car detention, where it exists, is embraced by section 2981, Revised Statutes, as amended by act of May 21, 1896, under the provision therein for "charges."—Dept. Order (T. D. 24431).

Liens for Freight on Unclaimed Goods.—Liens for freight will not be paid until all charges for storage and other expenses incurred by the United States, together with the duties chargeable thereon, have been deducted from the proceeds of the sale of unclaimed merchandise remaining in warehouse over one year.—Dept. Order (T. D. 14487).

MANIFEST, ARTICLES NOT ON.

SEC. 2809. If any merchandise is brought into the United States in any vessel whatever from any foreign port without having such a manifest on board, or which shall not be included or described in the manifest, or shall not agree therewith, the master shall be liable to a penalty equal to the value of such merchandise not included in such manifest; and all such merchandise not included in the manifest belonging or consigned to the master, mate, officers, or crew of such vessel shall be forfeited.

SEC. 2810. Whenever it is made to appear to the satisfaction of the collector, naval officer, and surveyor, or to the major part of them, where those officers are established in any port, or to the satisfaction of the collector alone, where either of the other of the officers is not established, or to the satisfaction of the court in which a trial shall be had concerning such forfeiture, that no part of the cargo of any vessel without proper manifests was unshipped, after it was taken on board, except such as shall have been particularly specified and accounted for in the report of the master, and that the manifests had been lost or mislaid, without fraud or collusion, or were defaced by accident, or became incorrect by mistake, no forfeiture or penalty shall be incurred under the preceding section.

DECISIONS UNDER SECTIONS 2809 AND 2810, REVISED STATUTES.

Opium and Cocaine Not on Manifest.

AN ACT To amend an act entitled "An act to prohibit the importation and use of opium for other than medicinal purposes," approved February ninth, nineteen hundred and nine.

SEC. 8. That whenever opium or cocaine or any preparations or derivatives thereof shall be found upon any vessel arriving at any port of the United States which is not shown upon the vessel's manifest, as is provided by sections twenty-eight hundred and six and twenty-eight hundred and seven of the Revised Statutes, such vessel shall be liable for the penalty and forfeiture prescribed in section twenty-eight hundred and nine of the Revised Statutes.—Dept. Order (T. D. 34221).

Fines—How Collected.—Vessels can not be seized or clearance refused for the purpose of collecting a fine imposed upon the master for violation of the revenue laws. The Government's remedy is limited to an action against the master.—Dept. Order (T. D. 32433).

Seizures, Duty in Cases of.—When goods, wares, and merchandise seized for violation of the customs revenue laws are released on payment of a fine equal to duty no further collection is to be made. In cases of release on payment of the appraised value or forfeiture of goods, wares, and merchandise

seized for violation of sections 2804, as amended, 2809, 3061, and 3082, Revised Statutes, duty is also to be paid. The "penalty equal to the value" imposed upon masters of vessels for violation of section 2809, Revised Statutes, is the home value, namely, foreign value and duty, of the goods, wares, or merchandise not manifested, and duty is not to be collected in addition thereto. Moneys collected as duties in seizure cases are to be accounted for as duties.—Dept. Order (T. D. 23819).

Fines on Masters of Vessels.—Collectors are instructed that whenever any goods or sea stores are found on board a vessel arriving from a foreign country which are not mentioned or described in the manifest or store list of such vessel, a fine should be imposed on the master equal to the value of the merchandise not manifested, or three times the value of the sea stores not listed.

If it be shown to the satisfaction of the collector, naval officer, and surveyor, or a majority of them, or to the satisfaction of the collector alone where there is no naval officer or surveyor, that the manifest has been lost or mislaid without fraud or collusion, or became incorrect by mistake, no fine will be imposed.

That the master had no knowledge that the goods not manifested or listed were on board is not sufficient to relieve him from the penalty. *The Helvetia* (6 Benedict, 51; *The Queen* (11 Blatch., 416).

In all cases where prohibited opium is found on board a vessel not manifested the fine should be imposed, as such cases do not fall within the provisions of section 2810, Revised Statutes. The value of the prohibited opium for the purpose of assessing the fine under section 2809, Revised Statutes, is the foreign value.

In transmitting to the department applications for remission of fines of less than \$1,000 imposed for violations of the revenue laws collectors should submit with the application a full statement of the facts and circumstances surrounding the case, together with a recommendation thereon. Where the fine is more than \$1,000 no remission can be made by the Secretary of the Treasury except after a summary investigation held in the manner prescribed in sections 17 and 18 of the act of June 22, 1874. See articles 1273 and 1274 of the Customs Regulations of 1908.—Dept. Order (T. D. 32083).

Vessel's Equipment.—Articles, such as cables and hawsers, purchased abroad in the course of the voyage for the bona fide purpose of substituting them, as part of the ship's equipment, for articles lost or deteriorated by use, are not subject to duty and need not be entered on the manifest.—U. S. v. *One Hempen Cable and One Hempen Hawser*, 41 Niles Reg., 273; 27 Fed. Cas., 264.

Unused Equipment of Vessel.—When articles purchased abroad for the equipment of a vessel are not used and remain on board at her arrival in the United States, they need not be reported on her manifest.—U. S. v. *23 Coils of Cordage*, Gilp., 299; 28 Fed. Cas., 290.

Sweepings of Unladen Cargoes not to be entered on coastwise manifests of foreign vessels.—Dept. Order (T. D. 8073).

Disposal of Goods Liable to Seizure for Nonentry on Manifest.—If unmanifested goods destined for your port arrive from a foreign port and are part of the general cargo, they are not to be seized by a subordinate customs officer in the waters or at any place in your district, but are to be sent to your port, sealed or unsealed, at the discretion of the inspector, and on their arrival are to be disposed of as provided in section 2887, Revised Statutes. If such unmanifested goods, being part of the general cargo, are not destined for your port, they are to be sent on to their port of destination, as provided in section

3069, Revised Statutes. If unmanifested goods belong or are consigned to the master, officers, or crew of the vessel, and any part of the cargo be destined to your port, you are to hold such goods for forfeiture, under the provisions of section 2809, Revised Statutes. This is the rule for the disposal of goods arriving from a foreign port. (See Decision 2669, of Feb. 18, 1876, of the synopsis of decisions for that year.)—Dept. Order (T. D. 7351).

Seizures on Vessel while Proceeding to Port of Destination.—Explaining Department Circular No. 28 of February 28, 1876, on laws relating to customs seizures for defects in the manifest.—Dept. Order (T. D. 2725).

Seizure of Goods for Omission from Manifest.—Conditions on which seizure may be made for any irregularities in the manifest.—Dept. Order (T. D. 2669).

MERCHANDISE, DEFINED.

SEC. 2766. The word "merchandise" as used in this title (XXXIV) may include goods, wares, and chattels of every description capable of being imported.

DECISIONS UNDER SECTION 2766, REVISED STATUTES.

Canadian Hay in Transit.—Canadian hay imported at Richford, Vt., and bond given for transportation and exportation via Boston. The hay was intended to be fed to Canadian cattle during voyage. Held not to be free, as the provision in Revised Statutes 2866 only applies to bona fide exportations to foreign countries and not to supplies to be consumed on the voyage.—T. D. 12576 (G. A. 1260).

Compass of Steamship.—The compass of a steamship, being part of its apparel and tackle, is not "merchandise" within the meaning of section 50, act of 1799.—U. S. v. Fry (D. C.), 48 Fed. Rep., 713.

Damage Making Importation Worthless.—The appraiser reports that the clothing was wound in coils, and has been subjected to a complete soaking with salt water, which has permeated the entire coil, oxidizing the wire and completely rotting the cotton backing, so that it is absolutely worthless, and can not be used for any purpose whatever, even as old junk.

In view of this report, the department is of opinion that the card clothing is not an importation of merchandise within the meaning of the law.—Dept. Order (T. D. 9719).

Dredge.—A steam dredge and scows used in connection therewith are vessels within the meaning of section 3, Revised Statutes, and neither is dutiable as a manufactured article not specially provided for. Affirming 83 Fed. Rep., 840.—The *International* (C. C. A.), 89 Fed. Rep., 484.

A dredge boat without power of self-propulsion and capable of use as a dredging machine only is a "manufacture or machine" and after exportation is entitled to be reimported without duty if "returned in the same condition as exported."—U. S. v. Dunbar (C. C. A.), 67 Fed. Rep., 783.

English Internal-Revenue Stamps.—These stamps, being merely receipts showing the payment of internal-revenue tax to the British Government, are not goods, wares, or merchandise within the meaning of the tariff laws, and they may be admitted to entry free of duty.—Dept. Order (T. D. 7223).

Foreign-Built Vessel is Not Merchandise.—A foreign-built vessel purchased by a citizen of the United States is not taxable under the tariff laws of the United States.—The *Conqueror*, 166 U. S., 110, 114.

From the foundation of the Government the duties upon ships and vessels have been regulated by acts independent of the customs laws and under a dif-

ferent system of legislation. Nor are vessels mentioned by name in any of the schedules prescribing duties. Accordingly, when the foreign-built yacht *Conqueror* was purchased abroad by an American citizen and navigated to the port of New York and was then seized by the collector, on the claim that she was liable to duties under the act of October 1, 1890, it was held that the yacht was not an imported article and not subject to duty.—The *Conqueror* (D. C.), 49 Fed. Rep., 99.

“Mackay-Bennett” Cable.—The *Mackay-Bennett* arrived with the intention of discharging the cable within the territory of the port of entry of New York. To discharge or unlade cargo does not necessarily mean that it should be put on land. A transfer of cargo from one vessel to another, or placing iron piers or caissons from a ship into the water, would be unloading.

The cable is an article imported from a foreign country, and it is subject to the provisions of the tariff of August 28, 1894.

It may be stated that the appellants have failed to point out any clause of the tariff which gives free admission to submarine cables, and the board knows of no provision which grants such exemption.—T. D. 15725 (G. A. 2906).

Materials for International Bridge.

DIPLOMATIC QUESTIONS.—Considerations of an international character, involving questions of diplomacy or international comity, address themselves to Congress rather than to judicial tribunals.

BOARD WITHOUT DISCRETIONARY POWER.—The board has no more discretionary power to withhold what the law gives than it has to give what the law does not authorize. *Converse v. U. S.* (21 How., 463, 474) followed.

DUTY ON MATERIAL FOR INTERNATIONAL BRIDGE.—The rule to be observed in treatment of foreign material for an international bridge between Canada and the United States is this: Articles brought to the American shore for temporary use only as a matter of convenience, but which are kept in charge of customs officers and are designed for permanent use in that portion of the bridge within the jurisdiction of Canada, are properly exempt from duty on the theory that they are not actually imported within the meaning of our tariff acts. But materials for use on that part of the bridge within the limits of the United States are properly subject to duty, unless made free by some express provision of law.

MIXTURE OF GOODS.—It is the duty of the importer to show to which of the above classes his goods belong; and in the absence of such proof the whole will be treated as dutiable. *U. S. v. Randlett* (19 Sup. Ct. Rep., 114) followed.—T. D. 22967 (G. A. 4906).

Materials from Foreign Vessel Condemned in United States.—The Portuguese bark *Maria Lila* condemned as unseaworthy and sold at auction and broken up; under the department's decisions, Synopsis 563 and 7807, the material taken from said vessel would not be considered as an importation, and would not be liable to duty.—Dept. Order (T. D. 13096).

Materials from Wrecked Vessel.—The vessel became unseaworthy by being driven ashore while detained in port pending proceedings in the United States courts at Jacksonville, Fla., under a libel for debts, and, after a sale by the United States marshal and a private resale, she was dismantled by the last purchaser, who took off the articles now in question. These articles are entitled to free entry, under the provisions of article 424 of the General Regulations of 1884.—Dept. Order (T. D. 7064).

Merchandise Retained in Vessel.—Where a cargo of coal has been purchased and arrives at a port of entry within the United States with the intention of unloading it and a portion of such cargo is purchased from the consignee

by the master of the vessel and retained for use as fuel, the coal is subject to duty, and it is not essential that the goods should be actually unloaded in order that the duties of the Government may attach.—T. D. 29406 (G. A. 6835).

Scow Not Dutiable as Merchandise.—A scow is a "vessel," within the meaning of section 3, United States Revised Statutes, and is not dutiable under the tariff act as imported merchandise. The *International* (67 Fed. Rep., 783; 14 C. C. A., 639, affirming 83 Fed. Rep., 840).

Where a protest relates to subject matter which is not, in contemplation of law, "imported merchandise," the case will be dismissed for want of jurisdiction, irrespective of the correctness of the collector's action.—T. D. 24002 (G. A. 5208).

Steamship "Altenburg."—The steamship *Altenburg*, arriving in the port of Philadelphia "in the ordinary course of navigation," is not imported merchandise within the meaning of the tariff act of 1909; and the Board of United States General Appraisers has no jurisdiction over a case involving an exaction of duties on such vessel, paid under protest. A subsequent conversion of the vessel into "scrap" held not to alter this rule.—T. D. 31898 (G. A. 7280).

Wreckage from United States Vessels.—These articles were obtained as wreckage from two United States war ships, the *Trenton* and the *Vandalia*, wrecked in the harbor of Apia, Samoa, in the year 1888.

These wrecks were presented by the United States Government to the Samoan Government.

The Samoan Government, in order to realize on said wrecks, engaged a San Francisco firm to gather and transport the material, including the goods in question, to the United States upon an agreement to give them, as compensation, a share of the profits realized from the sale of said wreckage.

The goods have become the "subjects of purchase and sale," and are now "merchandise" within the meaning of the law, "liable to duty according to their classification under the tariff." (Treasury Reg. (1884), arts. 422 and 426.)

The question is one purely of law, and not of international courtesy, as seems to be supposed. The United States Government, in donating the wreckage of these vessels to the Samoan Government, did not also donate to it the right to import these articles free of all duty if they were otherwise dutiable in the hands of any American citizen, or other person, or corporation.—T. D. 11582 (G. A. 757).

Wreck of "Kearsarge."—If the materials are of foreign manufacture they will be subject to the conditions prescribed in article 368, Customs Regulations of 1892, which provides that "no part of an American vessel, nor any of her equipments, wrecked either in our own or foreign waters, are to be regarded as 'goods, wares, or merchandise' when returned to the person or persons owning the vessel at the time of the wreck, and on proper proof of identification. If, however, they have changed ownership, they are to be regarded as merchandise."—Dept. Order (T. D. 15096).

Salvage—Wreck.—The tackle, apparel, and furniture of a foreign vessel wrecked upon our shores and landed and sold separate from the hull are not goods, wares, and merchandise imported into the United States within the meaning of the revenue laws.—The *Gertrude* (3 Story, 68; 2 Ware (Dav., 176), 181; 4 Law Rep., 444), 10 Fed. Cas., 265.

Goods saved from a wreck and brought within the United States are subject to duty under the acts of 1818 and 1823.

Import duties upon wrecked goods are to be paid out of the gross proceeds before deducting salvage, and are not to be charged exclusively upon the owner's share of the salvage.—Blatch. & H., 114.

Where property is salvaged on the high seas and brought by the salvors within the limits of the United States, the salvage claims are entitled to priority over the claims of the Government for duties.

Goods so brought into the United States are not imported goods in the sense of the customs laws, so as to necessarily attach the right to duties.

But where the goods so brought within the United States subsequently, by virtue of a sale, pass into consumption within the United States, an equitable right on the part of the Government to be paid duties arises, not taking precedence, however, of the salvage claims.—*Merritt v. One Case of Wool*, 32 Fed. Rep., 111.

MERCHANDISE IN WAREHOUSE.

SEC. 2971. All merchandise which may be deposited in public store or bonded warehouse may be withdrawn by the owner for exportation to foreign countries; or may be transhipped to any port of the Pacific or western coast of the United States at any time before the expiration of three years from the date of original importation; such goods on arrival at a Pacific or western port to be subject to the same rules and regulations as if originally imported there. Any goods remaining in public store or bonded warehouse beyond three years shall be regarded as abandoned to the Government, and sold under such regulations as the Secretary of the Treasury may prescribe, and the proceeds paid into the Treasury. In computing this period of three years, if such exportation or transshipment of any merchandise shall, either for the whole or any part of the term of three years, have been prevented by reason of any order of the President, the time during which such exportation or transshipment of such merchandise shall have been so prevented shall be excluded from the computation. Merchandise withdrawn for exportation shall be subject only to the payment of such storage and charges as may be due thereon.

SEC. 2973. If any merchandise shall remain in public store beyond one year, without payment of the duties and charges thereon, except as hereinbefore provided, then such merchandise shall be appraised by the appraisers, if there be any at such port, and if none, then by two merchants to be designated and sworn by the collector for that purpose, and sold by the collector at public auction, on due public notice thereof being first given, in the manner and for the time to be prescribed by a general regulation of the Treasury Department. At such public sale, distinct printed catalogues descriptive of such merchandise, with the appraised value affixed thereto, shall be distributed among the persons present at such sale. A reasonable opportunity shall be given before such sale, to persons desirous of purchasing, to inspect the quality of such merchandise. The proceeds of such sales, after deducting the usual rate of storage at the port in question, with all other charges and expenses, including duties, shall be paid over to the owner, importer, consignee, or agent, and proper receipts taken for the same.

DECISIONS UNDER SECTIONS 2971 AND 2973, REVISED STATUTES.

Bond for Duties.—Cargo of rice imported. Duty on uncleaned is 2 cents and on cleaned $2\frac{1}{2}$ cents per pound. The rice was entered for warehouse and the usual bond given, conditioned to pay \$12,524.95, or the ascertained duties. Rice withdrawn and duties of 2 cents paid amounting to \$12,352.15 or less by \$172.80 than the sum named in the bond. The rice was afterwards liquidated as clean rice, making a difference of \$12,111.17. The bond was held for this amount.

The ordinary warehouse bond in the form prescribed by the Secretary of the Treasury, in which the condition provides in the alternative that the penalty may be avoided by the payment of whatever duties may be ascertained to be due whenever the goods shall become subject to duty by withdrawal for con-

sumption, is hardly an ordinary pecuniary bond, but is rather a bond given to secure whatever duties may be by law chargeable upon the goods to which it refers. At all events if the obligor pay but a part of the sum of money fixed as above, and the whole of the sum thus fixed proves, on liquidation of the duties for which the bond was given, to be less than the sum with which the goods are rightly chargeable, he can not come in after the expiration of a year, and when at law a forfeiture has occurred, and tender payment of the difference (with interest) between the sum named in the bond and the amount which he has actually paid. He can be relieved from the forfeiture only on doing complete equity, and that, in such a case, is nothing less than the payment of all the duties to secure which he gave the bond.

Under the act to increase the duties on imports, passed June 30, 1864, the collector is under no obligation to give notice to the importer of his liquidation of duties. The importer who makes the entries is under obligation himself, if he wishes to appeal from it, to take notice of the collector's settlement of the duties.

The right of the importer to complain or appeal begins with the date of the liquidation, whenever that is made.—*Westray v. U. S.*, 18 Wall., 322.

Disposition of Duty-Paid Goods in Warehouse Over Three Years.—All duty-paid merchandise which remains in bonded warehouse more than three years from the date of importation will hereafter be treated as abandoned merchandise and sold, under the regulations heretofore provided, unless the owners thereof shall surrender to the storekeeper in charge of the goods the withdrawal permits, duly stamped for delivery. Upon the surrender of such permits the storekeeper shall notify the warehouse proprietor of the delivery of the goods by the Government, and report the fact upon the back of the permit and return the same to the collector.

No application for any casualty damage occurring after the expiration of three years from date of importation will be entertained.—Dept. Order (T. D. 12862).

Export Bond.—An export bond given in the sum of \$1,000, without containing any reference to the amount of the estimated duties (art. 587, regulations) on the goods, is valid, and the Government is entitled, upon breach of the conditions, to recover the whole amount of the bond and is not limited to judgment for double the amount of the duties as subsequently estimated. The steamer *Oteri*.—*U. S. v. Valensona*; *Same v. Oteri* (C. C. A.), 67 Fed. Rep., 146.

Exportation.—Where goods are consigned to the collector of customs at the port of shipment to be by him shipped abroad, and he gives a receipt reciting that "the said merchandise was duly inspected and marked at this port and laden on board the foreign steamer *W.* and that said vessel and cargo were duly cleared from this port," the exporters had a right to presume that the goods had been entered on the ship's outward manifest, and the fact that they had not been so entered was not a breach of the export bond. The fact that in the collector's receipt, which was on a printed form, the clause expressing the entry of the goods on the outward manifest is struck out, is immaterial when such receipt is not given until after the vessel has cleared.—*U. S. v. Allen* (D. C.), 39 Fed. Rep., 100.

Exportation of Merchandise from General Order.—Unless it shall appear by the invoice, bill of lading and manifest, or other satisfactory evidence, that merchandise arriving in the United States and remaining in general order without examination or appraisement, was, when shipped at the foreign port, destined for immediate exportation from the United States, no exportation thereof will be permitted except under entry for warehouse and exportation.

In bond and appraisement made as provided in such cases.—Dept. Order (T. D. 15504).

Inspection of Customhouse Papers.—Defendant made a demand on the collector for an inspection of the invoices, entries, warehouse bonds, entries for withdrawal and permits, and the customhouse memoranda of payment of duties, or in the books of the customhouse in which the payment of duties should be noted, if the same were paid. The collector refused. The importers proved that they had intrusted money to pay duties to one of their clerks and that their own books and papers did not furnish means of ascertaining the amount of duties nor what payments, if any, were made. The collector supported his refusal by reference to a regulation of the Treasury Department forbidding any person not connected with the customhouse to inspect or have access to or take copies of any customhouse paper, except upon written application to the collector, stating his personal interest in the application, and providing for a statement to be made on such application to be submitted to the collector and by him furnished to the applicant if deemed consistent with the public interest and necessary to the rights of individuals. (Regulations made under R. S. 251.) *Held*, that any regulations made under this section not inconsistent with law and fairly within its scope and purpose and not infringing upon any existing legal rights of individuals have the force of law.

Such of these customhouse papers as belong to the merchant when delivered to the collector, as, for instance, invoices, continue his property, though required by law to be impounded at the customhouse, and he has a legal right to inspect them and also other customhouse papers, relating to his transactions with the customhouse in respect to his importations, under reasonable restrictions.

Mandamus is the proper remedy to enforce such right of inspection, if denied.

Mandamus was denied and order entered staying all proceedings in this case until 20 days after the papers described in the petition have been exhibited to the attorney for the defendant. If not exhibited within 10 days after service of this order, alternative mandamus will issue requiring the collector to exhibit such papers or show cause why a peremptory mandamus should not issue.—*U. S. v. Hutton*, 10 Ben., 268; 25 Int. Rev. Rec., 57; 26 Fed. Cas., 454.

A collector is justified in refusing to testify or furnish copies of official papers, acting under instructions from the Department. Such papers are property and the Secretary of the Treasury has lawful authority to control that property and its custody.—*In re David N. Comingore* (96 Fed. Rep., 552), T. D. 21584.

Internal-Revenue Stamps.—Though the owner or importer of cigars from a foreign country may by his agent lawfully affix and cancel the internal-revenue stamps required by R. S. 3402, to be affixed and canceled while such cigars are in the custody of the proper customs officers, yet the collector may, in the exercise of a sound discretion, exclude such an agent from resorting to the public stores for that purpose; and in the absence of legislation, or regulation by the department, no action accrues thereby to the agent thus excluded.—*Slaight v. Hedden* (C. C.), 39 Fed. Rep., 103.

Merchandise Sold from Warehouse.—Imported goods sold "to arrive" were entered at the customhouse in the name of the seller and were stored in a bonded warehouse selected by the purchaser. He withdrew a portion of them upon an order signed by the seller under the Treasury Regulations, which require such an order where the goods in bond are withdrawn by any person other than the one in whose name they are entered and he afterwards became bankrupt. *Held*, that as to the rest of the goods the right of stoppage in transit existed in favor of the seller, and his seizure of them would not affect his right to

prove his debt on account of the purchase money of those withdrawn.—In re Bearns, 18 N. B. R., 500; 2 Fed. Cas., 1190.

Drawback.—Merchandise unclaimed for over one year from importation can not be exported with benefit of drawback.—Dept. Order (T. D. 14201).

Merchandise in Warehouse Over Three Years.—If goods remain in the public store or bonded warehouse more than three years, the Government has the right to sell them for the collection of charges and the clearance of the warehouse. But the goods are not forfeited, and may be redeemed at any time before advertisement of sale (R. S. 2972).—Abbott & Co. v. U. S., 20 C. Cls. R., 280.

When imported goods have remained in bond beyond three years and are thereupon deemed abandoned to the Government, the rights and liabilities become fixed at once, and the Government is entitled to retain from the proceeds of their sale or to collect upon the bond the amount of duties according to the then existing law, though a different rate of duty goes into effect before a sale.—Buxbaum v. U. S. (C. C. A.), 80 Fed. Rep., 885.

Payment of Duties to Confederacy.—Payment of duties on goods imported into the State of Florida in July, 1860, into the treasury of the State during the rebellion in no way affected the right of the United States to recover the amount of the duties by action on the warehouse bond.—U. S. v. Pensacola & G. R. R. Co., 11 Int. Rev. Rec., 78; 27 Fed. Cas., 494.

Perishable Goods.—Warehouse keeper reported to collector perishable nature of goods, whereupon the collector directed two United States appraisers to obtain information and report to him the condition of the article; and upon their recommendation of the necessity of an immediate sale ordered the perishable articles sold under section 1, act of August 6, 1846. In the absence of any imputation of a corrupt motive, the shortness of the public notice of the contemplated sale (one day) was not, per se, sufficient evidence of fraud to warrant a judgment against the collector. The regulations governing the sale of goods of the first class (such as have been in public stores more than one year) do not apply to the second class perishable goods.

Where a statute gives a person discretionary powers to be exercised by him upon his own opinion of certain facts, it is a rule of construction that the statute constitutes him judge of those facts. In the exercise of that discretion he is in the discharge not of a ministerial but of a quasi judicial function. To render him liable to damages for his conduct, it must be proved either that he exercised his power in cases not within his jurisdiction or in a manner not confided to him, or with malice, corruptly or oppressively.—Gould v. Hammond, 1 McAll, 235; 10 Fed. Cas., 874.

Proceeds of Sales of Unclaimed Goods.—Priority of lien. Where goods are sold as unclaimed under the provisions of section 2965, the owner of a private bonded warehouse shall have preference for his storage charges over the Government for its duties. Opinions of Solicitor of July 31, 1897, and February 16, 1898, modified. Order of apportionment of proceeds of sale.—Dept. Order (T. D. 19299).

Sale of Unclaimed Goods.—The Government may sell unclaimed goods under general order at any time after the expiration of one year, but such unclaimed goods may be entered by importer either for consumption or warehouse so long as they remain unsold.—Dept. Order (T. D. 18929).

Where a statute (R. S. 2976) authorizes a collector to sell goods "upon due notice" and the clerk whose duty it was to give such notice failed to put up any notice whatever, the collector could not be held liable for his negligence in

that regard, in the absence of proof of negligence on his part in the selection of the particular individual who was assigned to that duty.

The collector can not be charged with negligence in delegating to an appraiser the duty of examining merchandise and reporting whether it is deteriorating in value.

A collector who sells unclaimed goods in pursuance of R. S. 2976, in the belief that they are deteriorating in value, is not liable in trover, or in an action on the case of negligence, even though it appears that there was no substantial deterioration, if he acted in good faith and was not personally guilty of negligence.—*Rubens v. Robertson* (C. C.), 38 Fed. Rep., 86.

Services of Inspector at Warehouse—Salary Paid by Owner.—The case of *Corkle v. Maxwell*, 3 Blatch., 413, is decisive against the claim to recover moneys paid to the collector for services of an inspector at their private bonded cellar.—*Harriman v. Maxwell*, 3 Blatchf., 421; 11 Fed. Cas., 603.

Under the act of August 6, 1846, no person has any right to keep a warehouse for the storage of dutiable goods unless appointed by the Secretary, and such appointment can be revoked at pleasure.

A person who has his private warehouse designated as a place for the storage of dutiable goods, under the act of 1846, and who, on being required by the Government, before the depositing of any goods in his store, to elect to pay either the salary of an inspector or one-half storage, elects the former and makes payments, which are paid into the Treasury, can not recover them back. And this is so even though the Government had no legal right to demand the payments.

Under the act of August 6, 1846, the Government has the right to require the person whose warehouse is designated as a place for the storage of dutiable goods to pay the salary of an inspector to superintend the receipt and delivery of goods from the warehouse.

When the payment has been obtained by fraud, oppression, or extortion, or when it has been made to secure a right which the party paying was entitled to without such payment, and which right was withheld by the party receiving payment until such payment was made, such payment was not voluntary and may be recovered.

It may also be recovered when it was made upon a wrongful demand to save the party paying from some great or irreparable mischief or damage from which he could not be saved but by the payment of the sum wrongfully demanded.—*Corkle v. Maxwell*, 3 Blatchf., 413; 6 Fed. Cas., 555.

Storage Charges do not accrue on goods retained in customs custody and stored in public stores or Government warehouse pending reappraisement proceedings—Dept. Order (T. D. 24894).

Sureties.—Statutes not designed to affect the rights and liabilities of third parties, but only to guide the officers of the Government in the performance of their duties, are to be construed as directory to them only and as not creating any obligation to sureties or forming any part of their contract.

Sureties in warehouse bonds have the same rights and liabilities as ordinary sureties except as modified by the special laws and regulations concerning the collection of duties. Warehouse bonds must be interpreted in reference to the statutes and authorized regulations in force belonging to the warehouse system, and in so far as by design or necessary effect they modify the ordinary rights of sureties they are controlling, and to this extent must be regarded as parts of the contract of suretyship.

The act of August 5, 1861, sec. 5 (12 Stat., 292), directing a sale of the goods after three years, and the regulations providing for quarterly sales and

the sale of the abandoned goods at the next sale after three years, are all material parts of the contract of the surety, because they fix and determine the duration of his risk. Contracts of sureties are interpreted *strictissimi juris* as respects the subject matter or duration of their risk, and any change in either, without the sureties' assent, operates as a discharge. Where, upon goods being advertised for sale upon a regular day, the Secretary, at the request of the purchaser of the goods in bond, intervened by order and directed a postponement of the sale until further orders, without the consent of the surety, the latter was discharged. The importer being liable as principal, and not being in the situation of a surety having the right of indemnity against any other principal, is not discharged by the postponement of the sale. A surety's ordinary right to pay the debt and take possession of the goods at the end of three years is cut off by this act, and the right of the surety on a warehouse bond to pay the deficit and proceed for indemnity against his principal is also suspended until after the sale. The proceeding by abandonment and sale is a substitute for the ordinary remedy upon the bond after the lapse of three years. Immediate suit by the Government upon the bond before sale, would involve such inconsistencies that the common-law remedy must be deemed suspended by necessary implication until after the sale of the goods. Until after sale of the goods the surety in a warehouse bond has at no time any right of payment, of subrogation, or of suit for indemnity against his principal, and his risk continues necessarily until that time.

The provision in section 5, act of August 6, 1846, that goods not withdrawn in three years shall be deemed abandoned to the Government and sold was not designed merely for the security of the Government and to recover its duties in a particular case, but to secure in all cases, so far as possible, the prompt payment of duties within three years, and for this end to cut off peremptorily, after that period, the right of any person to pay the duties and withdraw the goods. Under the amendment by the act of July 14, 1862, section 21, the policy thus enacted involved a forfeiture of any surplus from the sale.—U. S. v. De Visser, 10 Fed. Rep., 642.

The sureties' risk does not exceed the three years named in it, or the additional period until sale of the goods not withdrawn. A reliquidation after the lapse of this period is not legal as against him.

The sureties' contract being only for the payment of duties upon withdrawal, *semble*, liquidation is a condition precedent to the payment and withdrawal, and, in the absence of fraud, reliquidation should not be enforced against the surety after a delivery and payment of the duties as once liquidated. It is the legal duty of the collector, not of the surety, to ascertain and liquidate the duties. Such liquidation is final and conclusive upon all persons interested, unless appealed from, and determines the amount of duties to which goods are then subject. Withdrawal and payment according to the liquidation existing at the time is a fulfillment of the terms of the bond for the time being, and the surety can not be held except upon the bond. Where the surety became bound for the withdrawal of goods within three years upon the payment of the duties "to which they shall then be subject," and the goods were withdrawn within that time and the duties paid as then liquidated, but upon the discovery of an error, seven years afterwards, a reliquidation was made showing a deficiency, the surety was not liable.

The importer is liable irrespective of the bond and as to him a reliquidation prior to the act of June 22, 1874, might have been made at any time afterwards.—U. S. v. Campbell, 10 Fed. Rep., 816.

The liquidation fixes, for the time being, the amount to which the goods are subject under R. S. 2964, 2970. On a bond conditioned for the withdrawal

of the goods within one year, "on payment of the duties and charges to which they may be subject by law at the time of such withdrawal," *Held* that a payment within a year of the amount of duties as thus liquidated was a discharge of the bond, and that, upon a subsequent reliquidation at a higher rate, no recovery could be had against the surety, though the importer would be liable in a different action for the additional amount.—*U. S. v. Georgi* (D. C.), 44 Fed. Rep., 255.

Theft of Merchandise in Bond.—The theft of merchandise from a bonded warehouse does not operate to relieve the importer from payment of duties accruing on the articles.—*T. D. 24118* (G. A. 5249).

While allowance by way of deduction in duty can properly be made for goods stolen before arrival in this country, no such allowance is permissible where the theft has occurred after their arrival at a port of entry in the United States or during their transshipment in bond to another port.

Goods transhipped in bond have been held by the courts to be constructively in warehouse. Hence they come within the purview of section 2961 of the Revised Statutes, which provides that all imports deposited in any public or private warehouse shall be at the sole and exclusive risk of the owner and importer.—*T. D. 29493* (G. A. 6853).

Unpaid Duties on Merchandise Sold from Warehouse.—Where importers have entered for warehouse and given bond for duties and have subsequently sold the goods in bond and authorized the purchaser to withdraw them from warehouse upon payment of duties and the goods are withdrawn without the payment of the proper duties in full, the original importers are liable on their bond, after the withdrawal of the goods, for the balance of duties unpaid and which should have been paid on the last withdrawal.—*U. S. v. Minturn*, 21 Int. Rev. Rec., 182; 26 Fed. Cas., 1272.

An importer of sugars having entered them at the customhouse by "warehouse entry," gave, with sureties, a bond conditioned to be void if he or his "assigns" should, within a specified time, withdraw them from the warehouse within the mode prescribed by law, and pay to the collector a sum specified "or the true amount when ascertained" of the duties imposed. The act required the sugars to be kept subject to the order of the importer "upon payment of the proper duties to be ascertained on entry and to be secured by his bond" with surety. He afterwards sold the sugars in bond and gave to the purchaser, who agreed to pay the duties as part of the purchase price, a written authority upon which the sugars were withdrawn; but the full amount of the proper duties, which was less than the sum specified in the bond, was not paid. *Held*, that the obligors are liable for the unpaid duties.

Although it is the usage of trade to sell goods in bond and deliver them by an order for their withdrawal, the purchaser withdrawing and paying the duties, the obligors do not become merely sureties with the goods as the primary security for the duties nor are they released because the officers of the United States unlawfully part with the goods without exacting payment of the duties.—*Minturn v. U. S.*, 106 U. S., 437.

SEA STORES.

SEC. 2795. In order to ascertain what articles ought to be exempt from duty as the sea stores of a vessel the master shall particularly specify the articles, in the report or manifest to be by him made, designating them as the sea stores of such vessel; and in the oath to be taken by such master, on making such report, he shall declare that the articles so specified as sea stores are truly such, and are not intended by way of merchandise or for sale; whereupon the articles shall be free from duty.

SEC. 2796. Whenever it appears to the collector to whom a report and manifest of sea stores are delivered, together with the naval officer, where there is one, or alone, where there is no naval officer, that the quantities of the articles, or any part thereof, reported as sea stores, are excessive, the collector, jointly with the naval officer, or alone, as the case may be, may in his discretion estimate the amount of the duty on such excess; which shall be forthwith paid by the master to the collector on pain of forfeiting the value of such excess.

Section 2797 of the Revised Statutes, as amended by section 17 of the act of March 3, 1897 (U. S. Stat. L., vol. 29, p. 691), reads as follows:

SEC. 2797. If any other or greater quantity of articles are found on board such vessel as sea stores than are specified in an entry of sea stores, or if any of the articles are landed without a permit first obtained from the collector, and naval officer, if any, for that purpose, all such articles as are not included in the report or manifest by the master, and all which are landed without a permit, shall be forfeited, and may be seized; and the master shall moreover be liable to a penalty of treble the value of the articles omitted or landed.

Sea stores and the legitimate equipment of vessels belonging to regular lines plying between foreign ports and the United States delayed in port for any cause may be transferred in such port of the United States under the supervision of the customs officers from one vessel to another vessel of the same owner without payment of duties, but duties must be paid on such stores or equipments landed for consumption, except American products.

DECISIONS UNDER SECTIONS 2795, 2796, AND 2797, REVISED STATUTES.

Ships' Equipment.

FREE ENTRY UNDER SECTION 17, TARIFF ACT OF MARCH 3, 1897.—Under this section goods to be entitled to free entry must be legitimate equipment of a vessel belonging to a regularly plying line, delayed in port, this equipment to be transferred, under supervision, from another vessel of the same line.

STEAM WINCHES.—These steam winches were to be installed by way of equipment, making the vessel ready for service differing from its previous service. They were not in the statutory sense an equipment of the vessel, but rather for the vessel, and they were not entitled to free entry.—U. S. v. Sickel (Ct. Cust. Appls.), T. D. 35394; (G. A. 7639) T. D. 34925 reversed.

Bolts, Nuts, Packing, Etc.

CONSTRUCTION OF A STATUTE.—Words in a statute having a general import are sometimes limited by words of a more restricted import, immediately following, and relating to the same matter. Language which is all embracing may be limited in its operation and effect where the intent to so limit it may be gathered from the intent and purpose of the statute. U. S. v. Trans-Missouri Freight Association (166 U. S., 320).

MERCHANDISE.—The words "all merchandise" in section 3111, Revised Statutes, are, under the above rule, modified and controlled by the direction in the statute to report the merchandise therein referred to to the collector as "sea stores."

SEA STORES.—Sea stores are only such commodities used upon a vessel as are consumed by the passengers and crew. George D. Ali's case, G. A. 4746 (T. D. 22433), and Hawley & Letzerich's case, G. A. 6643 (T. D. 28321). Such articles as become a part of the equipment of a vessel are known as "ship stores." U. S. v. 23 Coils of Cordage (28 Fed. Cas., 290; No. 16573).

SECTION 3111, REVISED STATUTES, CONSTRUED.—Bolts, nuts, packing, and articles of this character are not "sea stores" within the well-defined meaning of that phrase, and hence are not such merchandise as is provided for in section 3111, Revised Statutes.—T. D. 35824 (G. A. 7796).

Coal Stores Not Sea Stores.—Coal or coal stores are not sea stores within the meaning of section 17 of the act of March 3, 1897 (29 Stat., 687, 691), providing that sea stores may be transferred from one vessel to another of the same line without the payment of duties.

Sea stores may be defined to be supplies of different kinds provided for the subsistence and accommodation of the ship's crew and passengers, and do not include coal or coal stores. *U. S. v. Hawley* (T. D. 28855) followed.—T. D. 28935 (G. A. 6751).

Propeller Shaft.—The tramp steamer *Hughenden* on one of her trips had to replace a broken shaft and substituted a spare one carried in the hold of the vessel for use in such an emergency. A new spare shaft was ordered from the owners by the master of the vessel and was subsequently shipped to the United States as a part of the cargo of the *Caronia*, belonging to the Cunard Line. On arrival this shaft upon its release from customs custody was lightered to Pier 1, Erie Basin, and there placed in the hold of the *Hughenden*, to be used when required.

The transfer of cargo from one vessel to another while in port is a landing within the intendment of the law, *Fame* case (8 Fed. Cas., 982), and this steel shaft was in fact imported when brought within the limits of the port by the ship *Caronia* with the intent to unload it. The claim here that it was part of the equipment of the vessel for which it was imported we believe to be clearly without merit. It was ordered for such use but was not part of the ship's equipment prior to importation.—Ab. 30957 (T. D. 33055).

Ship's Equipment.

IMPORTED MERCHANDISE.—Every commodity having a value brought within the limits of the United States is imported merchandise within the meaning of the customs law.

MACHINERY FOR DISABLED FOREIGN VESSEL.—Machinery brought to the United States from a foreign country to repair a vessel lying disabled in one of our ports held to be imported merchandise.

TRANSFER OF EQUIPMENT IN PORT.—Machinery transferred without the supervision of customs officers from a foreign vessel of one line to a vessel of a different line is not entitled to exemption from duty under section 17, act of March 3, 1897. *U. S. v. Boyd* (24 Fed. Rep., 692); *James's* case, G. A. 4869 (T. D. 22828); *Swift Beef Co.'s* case, G. A. 4754 (T. D. 22450); 20 Op. Atty. Gen., 194.—T. D. 29260 (G. A. 6805).

Coal Stores.

OPENING DEFAULTS.—Where an importer has been duly notified of a day set for the hearing of his protest and fails to appear, he will be defaulted and the default will not be opened or the case further continued unless a proper excuse be rendered based on reasonable grounds.

SEA STORES.—Sea stores of a ship may be defined to be stores taken on board for the health and sustenance of the crew and passengers, being designed for the purpose of consumption, as distinguished from ship stores such as tackle and furniture of the ship.

TRANSFER OF SAME.—Such stores may be transferred from one vessel to another belonging to regular lines plying between foreign ports and the United States only where such vessels are delayed in port for any cause.

COAL STORES.—Coal stores of American vessels, so long as kept on board, are not dutiable on arrival in an American port, but such stores are prohibited to be unloaded from such vessel without being subject to duty.

SUFFICIENCY OF PROTEST.—A protest will not be sustained unless it has proper reference to an appropriate paragraph of the tariff act and is supported by satisfactory evidence.—T. D. 26864 (G. A. 6211).

Baggage of Seamen.—Baggage of seamen taken ashore to be examined. Articles purchased by officers and seamen for themselves to be treated as sea stores, with right of entry if lawfully landed. T. D. 26563 and T. D. 26660 regard cargo, stores, and baggage taken in charge by customs officers as goods subject to customs laws. Matters relating to entry, clearance, and movements of vessels and transportation of cargoes and to violations of laws relating to vessels or seamen not pertaining to duties within jurisdiction of Department of Commerce and Labor.—Dept. Order (T. D. 26673).

Sea Stores.—The department's construction of the statutes in relation to excessive sea stores, which construction permits the said stores to be entered for consumption on the payment of duties, should be followed. Modification of T. D. 25401 of June 17, 1904.—Dept. Order (T. D. 25884). Opinion of the Solicitor of the Treasury.

Excessive Sea Stores.

DUTY.—Excessive sea stores, when entered for consumption under the provisions of article 107 of the general Treasury Regulations of 1899, are dutiable at the same rates as ordinary imported merchandise.

ITALIAN RECIPROCITY.—Still wine from Italy, which forms part of the excess of sea stores of a vessel, is entitled to the reduced rates of duty prescribed by the Italian reciprocity agreement when entered for consumption under article 107 of the general Treasury Regulations.—T. D. 25692 (G. A. 5815).

Fines on Masters of Vessels.—Violations of sections 2797 and 2809, Revised Statutes, to be reported to the department. Applications for remission to be accompanied by full statement of facts.

That the master had no knowledge that the goods not manifested or listed were on board is not sufficient to relieve him from the penalty. The *Helvetia* (6 Benedict, 51); the *Queen* (11 Blatchf., 416).—Dept. Order (T. D. 32083).

Coal Retained on Ship.

RIGHT TO DUTIES.—An importation is complete when the goods are brought within the limits of a port of entry with the intention of unloading them, and the right of the Government to duties then attaches. It is not essential to that right that the goods should be actually unloaded.

COAL RETAINED IN VESSEL.—Coal was imported on a steamship, and entered at the customhouse, but a portion of it was purchased by the owners of the ship and retained in the vessel's bunkers as part of her coal stores for the return voyage, and was never unladen. *Held*, that it was nevertheless dutiable; that the sale being made after the importation was complete could not operate to defeat the Government's right to duties. *Held, also*, that it was not free under paragraph 523, tariff act of 1897, as "coal stores," nor under section 2798 of the Revised Statutes, relieving masters of steam vessels from the obligation of unloading their coal and paying duty upon it.—T. D. 24497 (G. A. 5355).

Sea Stores and Ship Stores.—Cigars listed or manifested as "ship stores" are not to be so treated by customs officers, but as "sea stores." The decision of the collector, in conjunction with the naval officer, where there is one, as to excessive sea stores, is not reviewable by the courts or Board of General Appraisers. The statute (sec. 2976, Rev. Stat.) requires payment of duties on any excess of sea stores found to exist and does not authorize the excess to be sealed up until the clearance of the vessel.—Dept. Order (T. D. 24340).

Ship Stores.—There is a distinction between the “ship stores” of a vessel and her “sea stores.” The former consist of articles which make up part of the body or equipment of the ship, her tackle, apparel, or furniture, such as anchors, cables, spars, and cordage, being necessary for her navigation. Sea stores consist of the provisions taken on board for the use of the passengers and crew, intended for their health and sustenance. *U. S. v. Coils of Cordage* (Baldwin's Rep., 502), 28 Fed. Cases, 276, and (*Gilpin's Rep.*, 299) 28 Fed. Cases, 290, followed.

Coal placed on a ship for use in navigation is in no sense “ship stores.”—*T. D. 22433* (G. A. 4746).

Excessive Sea Stores.—The laws of the United States contain no provision for the warehousing of surplus sea stores of vessels while in port, so that they may be reshipped for future use of the vessel without the payment of duty (*T. D. 7697* and *T. D. 18351*) ; nor can surplus sea stores be sealed up on board until the vessel sails to avoid duty (*T. D. 4438*).

There is no authority of law for the exemption from duty of the excessive sea stores purchased in Canada by the Thousand Isles Steamboat Co. and found on their vessels upon their arrival in the United States.

Excessive sea stores are not to be regarded as included in the requirements relating to the importation of “goods, wares and merchandise,” and the statement of the master of the vessel can be accepted in lieu of invoice for the purposes of assessment of duty. (Art. 167, Customs Regulations, 1892, and *T. D. 16458*.)—Dept. Order (*T. D. 22012*).

Vessels' Supplies.—Supplies imported for use of vessels on voyage of exportation dutiable.—Faramel, a cattle food, consisting of pulverized hay, bran, and different kinds of meal, mixed and bound together by sirup, dutiable as a nonenumerated manufactured article, at 20 per cent ad valorem, under section 6, act of July 24, 1897.—*T. D. 21661*.

Coal Used as Ballast is not a part of the sea stores of a vessel within the meaning of sections 2796 and 2797 of the Revised Statutes.

The determination of what constitutes excessive sea stores rests entirely within the judgment of the collector, in conjunction with the naval officer where there is one. His decision is not reviewable by the courts nor the board of classification.

The transshipment of coal from a vessel, lying in port, to a barge, and thence to another vessel, is an “unloading” of such coal sufficient to exclude it from the provisions of paragraph 523 of the free list of the tariff act of 1897 and render it dutiable as imported merchandise.—*T. D. 21324* (G. A. 4464).

Reimported Grain Bags.

SHIP'S EQUIPMENT.—The theory upon which the equipment of a ship is regarded as nondutiable is that it forms part of the vessel itself, ships and vessels arriving in the course of navigation not being imported merchandise within the meaning of tariff legislation.

GRAIN BAGS.—Grain bags exported containing feed to be used by cattle on the voyage, and returned empty in bales, but which were not in any sense owned by the reimporting vessel, or used on her voyage, or in any way identified with her appliances, are not part of her equipment. *U. S. v. Chain Cable* (2 Sumn., 362; 25 Fed. Cas., 391) ; *The Conqueror* (49 Fed. Rep., 99; *ib.*, 166 U. S., 110) ; *The Gertrude* (3 Story, 68; 10 Fed. Cas., 265) ; *In re Swift Beef Co.* (G. A. 4754) followed. *Kennedy v. U. S.* (95 Fed. Rep., 127) distinguished.—*T. D. 23472* (G. A. 5064).

Ship's Equipment.

REFRIGERATING PLANT.—It is doubtful whether a refrigerating plant can properly be deemed part of a ship's "equipment," when it is not shown to be the property of the owners of the vessel.

TRANSFER OF EQUIPMENT IN PORT.—Section 17, act of March 3, 1897, must be confined to vessels of the same owner, detained in a port of the United States.

There seems to be no provision of law admitting to free entry articles of ship's equipment, imported for a foreign-built vessel, sailing under a foreign register.—T. D. 22450 (G. A. 4754).

Extra shaft, part of the original equipment of a foreign vessel, dutiable if landed for future use. T. D. 20748 distinguished.—Dept. Order (T. D. 24075).

Ship's Anchor.—The British steamer *Mount Carmel*, while lying at Vancouver, British Columbia, lost an anchor overboard. The vessel proceeded to the American side of the sound. Shortly afterwards the anchor was recovered and shipped to the *Mount Carmel* by a sound steamer.

The said anchor was part of the equipment of the *Mount Carmel*, temporarily separated from that vessel by a casualty, and its arrival in the United States for transfer to the said vessel was not in the nature of an import from a foreign country. (*Weld v. Maxwell*, 4 Blatch., 136.)—T. D. 13779 (G. A. 1973).

Entry of Surplus Sea Stores.—Surplus sea stores of vessel can not be entered for warehouse.—Dept. Order (T. D. 7697).

Decision of Collector and Naval Officer Final Under R. S. 2796.—The merchandise was duly specified on the manifest of the vessel as sea stores, and the applicants claim that, inasmuch as the vessel on leaving France carried out a large number of steerage passengers to a South American port, the articles were stores taken in case necessity required their use, and that the same were not excessive.

The department is unable to afford the applicants any relief in the premises, it being prescribed by section 2796, Revised Statutes, that whenever the collector and naval officer shall determine that any articles imported as sea stores are excessive, and shall estimate the amount of duty on such goods, the duty must be forthwith paid by the master to the collector, on pain of forfeiting the value of such goods.—Dept. Order (T. D. 9927).

Forfeiture of Cigars Under Section 2796, Revised Statutes.—Should you declare the number of the cigars in this case excessive as sea stores, under section 2796, Revised Statutes, you will demand duties, or a fine equivalent to duties, as the condition of release, according as that excess shall or shall not be permissible as a legal importation under section 2804, Revised Statutes.—Dept. Order (T. D. 8318).

Sea Stores.—Dutiable on change of vessel from foreign to coasting trade.—Dept. Order (T. D. 4420).

Ship's Equipment.—Where articles are purchased abroad for a vessel to be used as a part of her equipment, they are not sea stores.—U. S. v. 23 Coils of Cordage, Gilp., 299; 28 Fed. Cas., 290.

Excessive Sea Stores.—What may be a reasonable allowance of goods to be made to a sea vessel, to be entered free as sea stores, is referred to the judgment of the collector and naval officer, where there is one, and in ports where there is none, to the collector alone.

If there be no reason for imputing collusion between the importer or master and the officers of the customs for the purpose of defrauding the United States of the duties, the decision of the collector is conclusive.

If an amount manifestly excessive were allowed, it might furnish a presumption of fraudulent collusion.

If the importer takes goods from the vessel which were entered free as sea stores and uses them as merchandise, as by offering them for sale, he will be liable to an action of debt for the duties; but the goods are not liable to forfeiture.—An Ullage Box of Sugar (1 Ware (350), 355), 24 Fed. Cas., 504.

Sea Stores.—Information for the forfeiture of sea stores for not being reported on the manifest. Cordage, raven's-duck, and sailcloth found on board of a vessel on her return from a voyage are not sea stores within section 45, act of 1799.

If intended for the use of the ship, they are a part of its tackle, apparel, and furniture; if not, they are a part of the cargo.—U. S. v. 24 Coils of Cordage, Baldwin, 502; 28 Fed. Cas., 276.

Hempen cables and hawsers are not "vessel and cabin stores" within section 23 of the collection act of 1799; nor are they "sea stores" within section 45 of that act. These expressions mean stores or provisions laid in for cabin or steerage, for officers, passengers, or crew, or, if capable of further extension, can only be applicable to articles of consumption which perish in the using and not to the tackle and apparel of a ship—the sails, rigging, cable, or anchors.—U. S. v. One Hempen Cable and One Hempen Hawser, 41 Niles Register, 273; 27 Fed. Cas., 264.

Ship's Equipment.—In 1850 a new vessel sailed from Boston to New Orleans and thence to Liverpool,* having a set of anchors and chains as a part of her equipments. It was her first voyage. At Liverpool her master, by direction of her owner, previously given, bought another set of four anchors and chain cables. Nothing had happened during the voyage to make anchors and chain cables with which she started less seaworthy than when she left the United States. The new set was purchased for the alleged reason that the former set was too light to hold the vessel while lying at anchor in the river Mersey. The new set used and the old set transferred to another vessel after return to the United States. *Held* dutiable.

If an anchor and chain cable is purchased abroad by an American vessel to supply the place of one which has become unseaworthy from any cause after the sailing of the vessel from a port of the United States, and if such purchase is made bona fide for the use of such vessel and not to sell it again as merchandise, and if it is used for the vessel, then it is bona fide a part of the equipments and appurtenances of the vessel and not subject to duty.

To be merely used as a part of the equipments and appurtenances of a vessel is not sufficient to change the character of the articles and to convert them from goods, wares, and merchandise into a portion of the vessel. They must also be bona fide such a part, under a necessity not occasioned by any fault of her master or owners in not properly equipping her originally for her voyage.

An anchor and chain cable which is bona fide a part of the equipments and appurtenances of an American vessel is not on being brought by her to the United States subject to duty.—Weld v. Maxwell, 4 Blatch., 136; 29 Fed. Cas., 614.

SHORTAGE IN PACKAGE, FOUND BY APPRAISER.

SEC. 2921. If, on the opening of any package, a deficiency of any article shall be found, on examination by the appraisers, the same shall be certified to the collector on the invoice, and an allowance for the same be made in estimating the duties.

DECISIONS UNDER SECTION 2921, REVISED STATUTES.

Shortage Not Noted by Appraiser.

Duties can be collected only on articles which actually arrive in this country. *Marriott v. Brune* (9 How., 619).

HIDES.—On an importation of hides, which are subject to an ad valorem duty under the tariff act of 1897, it was shown that 97 hides out of 175 were missing. *Held*, that duty could be collected only on the number actually imported, even though the local appraiser had failed to examine the bales and verify the shortage claimed by the importers.

NOTATION OF APPRAISER.—Section 2921 of the Revised Statutes, providing that, on opening a package of imported merchandise, the appraiser shall note on the invoice any shortage which he may discover, is not intended to provide an exclusive method of ascertaining and proving a shortage.

PROOF OF LOSS.—The fact of the nonimportation of merchandise whether by reason of not having been shipped from a foreign port, or because of loss in transitu, may be established by satisfactory testimony under the ordinary rules of evidence.—T. D. 25965 (G. A. 5891).

No allowance for missing packages of imported goods from cases not opened in presence of officers of the customs.—Dept. Order (T. D. 15453).

Theft of Imported Goods.—The operation of section 2921 of the Revised Statutes in regard to making allowance for a deficiency of goods, discovered on opening a package, is not confined to goods lost in transitu before arrival at an American port, but embraces any loss after importation, found by the appraisers on the opening of a package, and certified to the collector on the invoice.—T. D. 24511 (G. A. 5359).

Shortage on Importation Transported in Bond.—The merchandise was invoiced as five cases containing 112 cloaks. It arrived at New York and was transported to Savannah, when on opening the cases it was found that there was a shortage of 16 cloaks. Under article 906, Regulations, 1892, an allowance must be made.—T. D. 14758 (G. A. 2480).

Excess in One Shipment Claimed to Offset Shortage in Another.—Silk goods imported on September 23, 1890, were short and the importers claimed that the excess on the goods of the same kind imported October 1, 1890, should be offset against such shortage. *Held*, that the importers having failed to claim a shortage can not now legally offset this excess.—T. D. 13509 (G. A. 1811).

Appraiser's Report of Shortage is Sufficient for Allowance.—Where the local appraiser reports to the collector that on the opening of a package of imported merchandise a deficiency of goods was found to exist, it is the duty of the collector to make due allowance for such deficiency in the estimation of duties, and he can not require the importers to produce evidence, under article 1419 of the Treasury Regulations of 1899, that the shortage occurred before the arrival of the merchandise in this country.

A Treasury regulation is invalid which amounts to an amendment of an act of Congress. *Morrill v. Jones* (106 U. S., 466) followed.—*U. S. v. Park*, 77 Fed. Rep., 608.

TARE AND DRAFT.

SEC. 2898. In estimating the allowance for tare on all chests, boxes, cases, casks, bags, or other envelope or covering of all articles imported liable to pay any duty, where the original invoice is produced at the time of making entry thereof, and the tare shall be specified therein, the collector, if he sees fit, or the collector and naval officer, if any, if they see fit, may, with the consent of the consignees, estimate the tare according to such invoice; but in all

other cases the real tare shall be allowed, and may be ascertained under such regulations as the Secretary of the Treasury may from time to time prescribe; but in no case shall there be any allowance for draught.¹

DECISIONS UNDER SECTION 2898, REVISED STATUTES.

Tare and Draft Defined.—Draft and tare in a commercial sense and usage have a separate and distinct meaning and application. The former is an allowance to the merchant when the duty is ascertained by weight, as in the present instance, to insure good weight to him. Tare is allowed for the outside or covering of the article imported, whether it be a box, barrel, bag, bale, mat, etc.

Under section 58 of the act of 1799 both draft and tare are allowable on sugar imported in bags and subject to duty by weight.—*Napier v. Barney*, 5 Blatchf., 191; 17 Fed. Cas., 1149.

Tare—How Obtained.

TREASURY REGULATIONS.—Under section 2898, Revised Statutes, it is provided that, in estimating allowance for tare on imported merchandise, except in certain specified cases, "the real tare shall be allowed, and may be ascertained under such regulations as the Secretary of the Treasury may from time to time prescribe." *Held*, that where United States weighers, in ascertaining the tare of imported cheese, have followed the Treasury regulations prescribed by the Secretary under the authority of said section 2898, their method is reasonable and therefore lawful, whether leading to mathematically accurate results or not. *Wilson v. Maxwell* (2 Blatch., 316; 30 Fed. Cas., 147) followed.

METHOD FOR OBTAINING TARE.—The method prescribed for obtaining the net weight of imports is to ascertain and deduct the weight of boxes, casks, and other coverings of the merchandise from the gross weight, and does not require the article itself to be separately weighed apart from all coverings.

WEIGHT OF CHEESE.—Certain Camembert cheese was imported in large wooden boxes, each box containing 60 small boxes, and each small box holding one cheese wrapped in paper. The importers claimed that the dutiable weight should be found by weighing the cheese itself, free from the boxes and paper. *Held*, that there is no provision of law for ascertaining the net weight in such manner.—*T. D. 30380* (G. A. 6985).

Schedule Tare.—In determining the dutiable weight of leaf tobacco, the actual tare of 14½ pounds to the bale, found by the Government weigher, should be allowed rather than the schedule tare of 13 pounds to the bale set forth in article 1109, Customs Regulations of 1915.—*T. D. 37239* (G. A. 8071).

Tare, Invoice.—Under section 2898, Revised Statutes, and articles 1657 and 1658 of the Treasury Regulations of 1899, where the original invoice is produced at the time of making entry and the tare is specified thereon, the collector may, if he sees fit, estimate the tare according to such invoice, but the importer is not bound to accept such estimate unless he has declared in writing on the entry his assent to the estimate of tare as set forth in the invoice. In the absence of such assent, if the importer is dissatisfied with the tare allowed by the collector, and serves notice of such fact on the collector, the actual tare, to be estimated by weighing, must be allowed.

Under said regulations, the consignee, owner, or agent is not bound to give notice in writing at the time of making entry of his desire to have the actual or the schedule tare allowed. The filing of a protest within the statutory time is sufficient notice to the collector of such desire.—*T. D. 23919* (G. A. 5190).

¹ The word here given as "draught," was "draft" in the act of July 14, 1862, and in the act of March 12, 1799. In *Marriott v. Brune* (9 How., 633), it was held that this word should be "draft," meaning dust and dirt, and not what is generally meant by "draught" or "draft." (1 Brightly, 358.)

Cheese—Allowance for Coating.—An allowance of the weight of a preservative coating on certain cheese from Italy, as tare, disallowed.—*Ab.* 33653 (T. D. 33763).

Cheese.—The question herein arises over the tare on kegs containing cheese in brine. It consists of small cheeses packed in the keg, one upon another, and brine is added apparently to preserve and protect them in shipment. The Government officer took the tare of 12 kegs or packages. He found in 6 of these brine, and in the other 6 brine and cheese mixed, from which it would appear that the cheese had disintegrated somewhat and uniting with the brine formed a mixture of brine and cheese of a pasty consistency. It is claimed by the importers that more allowance should have been made for brine. Not sufficient evidence to warrant agreeing to that contention.—*Ab.* 23709 (T. D. 30768).

China Clay.—The tare allowable for the weight of casks containing china clay weighing one-half ton, exported from Great Britain, *Held* to be an average of 72 pounds per cask in the absence of evidence satisfactorily showing the actual tare of the particular importation. Customs Regulations of 1899, arts. 1657, 1658; T. D. 27698.—T. D. 28349 (G. A. 6650).

Flour Dust in Empty Bags.—Empty flour bags made of jute, dutiable according to weight, were imported, tare being allowed on the bands binding them into bales. The importer claimed an allowance for the estimated weight adhering to the bags. *Held*, that it is impracticable to estimate the weight of the flour and that the refusal to make such allowance was correct.—T. D. 13553 (G. A. 1825).

Hides.

TARE, GENERALLY.—The impurities ordinarily present in an article of merchandise do not constitute tare; and such impurities as are not commonly present in the merchandise as traded in are alone, for dutiable purposes, the subject of allowance.

TARE ON HIDES.—No rule can be laid down to determine the precise number of hides in a given importation that should properly be examined and tested in order to fix a just allowance for tare on an entire consignment, but in the case at bar, of the importations immediately involved, a fair number and selection of hides were examined and tested by an examiner and by the representatives of the importer, when 10 out of 795, 5 at a time being selected at different stages of the count, and 5 out of 409, chosen from the other lots, had been so examined and tested. On the evidence, an allowance of 2 pounds per hide for tare would have been a proper allowance on these two consignments.—*Shallus v. U. S.* (Ct. Cust. Appls.), T. D. 31408; (G. A. *Ab.* 23068) T. D. 30547 modified and affirmed.

Allowance for Impurities.—Invoices of flaxseed showed the gross weight, and a tare of 5 pounds per bag, and a deduction of 4 per cent for impurities composed of clay, sand, and gravel. The collector deducted the tare, which was the weight of the bags, but refused to allow for impurities, assessing a duty of 20 cents per bushel of 50 pounds upon the gross weight less the tare. The case turned upon the meaning of the word "draught" in R. S. 2898, the Government claiming that it is a misspelling of the word "draft." The court sees no good reason for this view. The word refers to arbitrary deductions and not to impurities, and the importer is entitled to an allowance of percentage for impurities.—*Seeburger v. Wright & Lawther Co.*, 157 U. S., 183.

Invoice Tare, When Allowed.—Eight per cent of tare allowed on ocher dry in casks. The importers did not declare in writing on the entry their assent

to the estimate of tare as set forth in the invoice (as required by art. 1090, Regulations, 1892). Protest claiming invoice tare overruled.

Article 1090, Regulations, 1892, being in accord with both the letter and the spirit of the statute, has the force of law.—T. D. 15074 (G. A. 2627).

Jute in Bales—Allowance for Bands.—Under R. S. 2898 an allowance must be made, in estimating the duty on jute in bales, for the weight of jute tie ropes with which the bales are bound up, it appearing that between buyer and seller these ropes are regarded as tare and are never charged for, a deduction equal to their weight being made from full weight of the bale and only the net weight being billed.—*Fachri v. Magone* (C. C.), 53 Fed. Rep., 789.

Liquid in Tins Not Tare.—The liquid in these tins was not added, but is an oil exuding from the fish in the processes of canning, this oil taking into solution the inclosed salt, forming thus a brine. There is no case here for an allowance on account of impurities or for tare. *Shallus v. U. S.* (1 Ct. Cust. Appls., 316; T. D. 31408).—*Rosenstein Bros. v. U. S.* (Ct. Cust. Appls.), T. D. 33840; (G. A. Ab. 32339) T. D. 33409 affirmed.

Official Scales.—In determining an allowance for tare, weights taken upon scales in compliance with official duty must be accepted in preference to those taken on scales without an official status and not shown to have been tested and to be correct.—*U. S. v. Lozano, Son & Co.* (Ct. Cust. Appls.), T. D. 35506; G. A. Ab. 37194 reversed.

Soap in Boxes.—The act of July 30, 1846, did not vary the law previously in force regulating the method of ascertaining the quantity of merchandise imported. Such quantity is still to be ascertained by the rules prescribed in sections 58 and 59, act of 1799. Accordingly, where soap in boxes was imported in 1850 the dutiable weight was the gross weight of the soap and boxes, deducting only 10 per cent as tare, as prescribed by section 58, act of 1799, and the importer was not entitled to an allowance of the actual weight of the boxes as tare.—*Wilson v. Maxwell* (2 Blatchf., 316), 30 Fed. Rep., 147.

Steel in Bundles.—An allowance should be made on steel in bundles for iron ties or bands which are of no commercial value after being removed from the bundles.—T. D. 17559 (G. A. 3650).

Duty assessed on the gross weight of Siemans-Marten metal, which included the weight of bands of wire and pieces of wood used to confine the metal. The weight as returned by the weigher and upon which duty was assessed is not tare under R. S. 2898, and, in the absence of proof, its value is the same as the value of the metal.—T. D. 13168 (G. A. 1589).

An Actual Finding of Tare.—The contention here as to tare is limited to the consignment of sugar on one vessel. In this case the collector in reporting tare departed from his own actual finding. A guess or estimate of a proper allowance for tare may not be substituted for a finding arrived at according to the regulations that control.—*American Sugar Refining Co. v. U. S.* (Ct. Cust. Appls.), T. D. 32352; (G. A. Ab. 25792) T. D. 31675 reversed.

Sugar Bags.—The tare authorized to be taken by the regulations is actual tare. (Cust. Regs. of 1908, art. 944.) The bags in their wet condition had already been weighed, and constituted a part of the gross weight of the merchandise. In ascertaining the tare they were clearly entitled to have the bags precisely in the same condition as when the gross weight was taken.

The practice of taking tare after exposing the bags to the sunlight and air was an erroneous practice.—Ab. 24706 (T. D. 31255).

Regulations governing the ascertainment of actual tare of sugar bags are amended so as to provide for the boiling of such bags. T. D. 32976 modified accordingly.—Dept. Order (T. D. 36063).

Article 944 of the Customs Regulations of 1908 amended. Schedule tare of 2½ pounds per bag for bags measuring 29 by 48 inches, containing Cuban sugars, established. When actual tare is taken, bags to be steam cleaned.—Dept. Order (T. D. 32976).

Average Tare.—Duty was assessed by the collector on the basis of the actual tare determined by finding tare of 15 bales. By instruction of the collector's office, the storekeeper also took the tare of some 86 bales, which has been returned by the collector as part of the record in this case. The tare arrived at by averaging the tare upon the 15 bales is 10⅓ pounds. In the liquidation 10½ pounds was allowed as tare for each bale. By the storekeeper, 12.1 pounds per bale was found.

We know of no way to arrive at a just conclusion except to take the tare reported by both witnesses and consider the number of bales tared by them, and thus arrive at an average tare of 11.88 pounds.—Ab. 37194.

Invoice Tare.—The invoice tare was allowed on certain Sumatra tobacco at the request of the importer, who afterwards claimed that allowance should be made of tare for outside bagging in addition to invoice tare. Protest overruled.—T. D. 13510 (G. A. 1812).

Water in Tins.—The merchandise is beans, peas, and mushrooms in tins. The collector included the weight of the water in the tins to determine the weight of the goods. The water was designedly placed in the tins as a preservative of the contents, and is common to the condition of importations of this kind. By paragraph 251, tariff act of 1909, this method of packing was recognized, and the weight of the tins, with their contents, constitutes dutiable weight, and no allowance for tare can be made. *Shallus v. U. S.* (1 Ct. Cust. Appls., 316; T. D. 31408).—*Austin, Nichols & Co. et al. v. U. S.* (Ct. Cust. Appls.), T. D. 34250; (G. A. Ab. 33519) T. D. 33732 affirmed.

WEIGHT AND GAUGE.

SEC. 2837. All invoices shall be made out in the weights or measures of the country or place from which the importation is made, and shall contain a true statement of the actual weights or measures of such merchandise, without any respect to the weights or measures of the United States.

SEC. 2920. In all cases in which the invoice or entry does not contain the weight, or quantity, or measure of merchandise, now weighed, or measured, or gauged, the same shall be weighed, gauged, or measured at the expense of the owner, agent, or consignee.

DECISIONS UNDER SECTIONS 2837 AND 2920, REVISED STATUTES.

Actual Weight as Against a Trade Custom.—Denia raisins found to exceed 28 pounds to the box, and though it is the trade custom to accept such raisins as weighing 28 pounds, duty must be assessed at the actual weight.—T. D. 14624 (G. A. 2382).

Allowance for Decrease in Weight.—Under the act of 1846 ad valorem duties are to be paid on the quantity of goods actually imported, not on the amount put in the foreign country. Where such quantity is measured by weight, a loss of weight on the voyage, whether by drainage or evaporation, will proportionately diminish the duties, notwithstanding what is lost in weight may be gained in value.—*Austin v. Peaslee* (20 Law. Rep., 443), 2 Fed. Cas., 235.

Allowance for Weight of Sea Water Absorbed During Voyage.—A duty assessed on gross weight of burlaps including sea water absorbed during voyage.

Held, that allowance should have been made for sea water and duty assessed on the actual weight, as shown by the invoice, excluding the weight of the water.—T. D. 13339 (G. A. 1719).

Allowance for Unusual Absorption of Water.

Absorption of Water Other Than Sea Water.—In an importation of wool which has absorbed an unusual amount of water while on the voyage of importation, and before arrival at the port of destination, the collector in assessing duty may make allowance by way of a deduction from the landed weight, on competent proof of such excessive weight. Article 1276 of the Customs Regulations of 1899, relating to the unusual absorption of sea water or of moisture, impliedly includes water other than sea water.

Manner of Proof.—*Held* that, while it is desirable that importers should comply with the regulations of the Secretary of the Treasury with respect to the method of proof, so as to facilitate the administration of the customs laws, such regulations are directory rather than mandatory, and do not debar importers from proving their claim by the ordinary rules of evidence.—T. D. 27220 (G. A. 6319).

Wool imported the weight of which was increased by the absorption of sea water between the time of departure from the port of exportation and arrival at destination. *Held*, that the Board of General Appraisers has jurisdiction of a protest against an assessment on the weight caused by the absorption of sea water and that an allowance should be made for sea water so absorbed.—T. D. 16001 (G. A. 3025).

Appraisement.—The appraisement of imported merchandise is restricted to determining the price or value of the parcel or quantity by which the purchase and sale of the article are made, and has rightfully no reference to the totality of the purchase. This is the rule even though the goods are subject to an ad valorem rate of duty. The United States weigher is the proper officer to ascertain the weight of imported goods, and his return should be followed by the collector in estimating duty.

On the importation of a quantity of coke, an article subject to an ad valorem rate of duty under paragraph 415, tariff act of 1897, the return of the United States weigher showed a shortage of about 10 tons. The collector refused to allow for this shortage, but collected duty on the entire amount shown by the invoice. *Held*, that his action was erroneous, and that the importer could be required to pay duty only on the amount actually arriving, as shown by the return of the weigher. In re Rossbach, G. A. 5178 (T. D. 23871), and authorities there cited.—T. D. 25767 (G. A. 5848).

Arbitrary Addition to Government Weights.—The weight of sugar as ascertained by the Government weighers, who act in the line of their authority as vested in them by the statute, is held to be conclusive, and the collector of customs is without authority to make an arbitrary addition to such weights, not justified by the evidence.—T. D. 30248 (G. A. 6960).

Ascertainment of Weight.

Gross Weights Generally Conclusive.—The return of United States weighers of imported merchandise as to gross weight will generally be considered conclusive on the board and the courts so long as the weighers act within the scope of their lawful authority and proceed on no wrong principle; but the board will correct an erroneous ascertainment of actual tare where it is shown that an insufficient number of cases were tested by the weigher, and satisfactory evidence is furnished in proof of the correct tare on the goods.

Tare.—Where a test is made for actual tare, such test must be made of representative packages of the whole importation. *Held*, accordingly, that tests

made of 200 cases of walnuts, out of an importation of 300 described in the invoice, must prevail over a test of only three cases made by the weigher, the tare varying on the several packages.—T. D. 29294 (G. A. 6815).

Authority of Appraisers.—Appraisers have not authority to fix weight or quantities, only valuation.—*Marriott v. Brune*, 9 How., 619, 634.

Gauge of Beer.—The only question sought to be raised by the protest was the correctness of the gauger's report on the quantity of beer, and this question was sufficiently indicated.

The gauger made no return of actual measurement, but simply a return of the branded capacity of the casks. In doing this he divided the shipments into two lots, corresponding in the number of casks to those named on the invoice and entry, and so entered the two lots as to increase the apparent branded capacity of one and to decrease the other. A computation shows the board reached a result entirely equitable.—*U. S. v. Neustadt* (Ct. Cust. Appls.), T. D. 34470; (G. A. Ab. 32853) T. D. 33591 affirmed.

In estimating the dutiable quantity of imported beer in which krausen is used, an outage allowance of 1 per cent of the branded capacity of the barrel shall be made as a safety margin, it being shown that it is unsafe to fill the barrels to the full capacity.—T. D. 35881 (G. A. 7811).

In the absence of satisfactory proof showing that the collector assessed duty on a greater quantity of beer than was actually imported, the importers are not to be arbitrarily relieved from the payment of the duties required by law. *Hollender & Co. et al. v. U. S.* (4 Ct. Cust. Appls., 406; T. D. 33850).—*Hollender & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 34195; (G. A. 7452) T. D. 33303, application for rehearing denied.

The amount of the beer in the containers not entirely filled was determined by experts, who sounded the casks and estimated the shortage. All of the half barrels were inspected for shortage by the importer, the steamship company, the customs gauger, and the customs stamper. The importer in his own behalf bottled 2,040 half barrels out of 30,068 and, protesting, claimed the result as it appeared to be the true gauge of the beer. This method was liable to too much error to warrant such a finding of contents valid as against the gauger's, sustained as that is by the collector's, decision.—*Hollender & Co. et al. v. U. S.* (Ct. Cust. Appls.), T. D. 33850; (G. A. 7452) T. D. 33303 affirmed.

The quantity of beer imported is to be determined as a question of fact by a preponderance of the evidence. Measurement of 6½ per cent of the beer imported during a certain period does not furnish sufficient data from which to determine the amount imported, when traversed by creditable proof and when contrary to return of the Government gauger acting under reasonable regulations.—T. D. 33303 (G. A. 7452).

Castile Soap.—The invoice of castile soap made at the time of its shipment gave the weight as 72,983 pounds. The customhouse weigher reported the weight as 70,286 pounds. The duty should be assessed only on the quantity, while the weigher's return was net weight 6,263. The soap was invoiced to have been shipped. The last paragraph of Revised Statutes 2900, forbidding an assessment of duty on an amount less than the invoice value, refers only to the price and not to the quantity.—*Weaver & Sterry (Ltd.) v. Saltonstall* (C. C.), 38 Fed. Rep., 493.

Duty assessed on 6,703 pounds of castile soap, the invoiced and entered value, while the weigher's return was net weight 6,263. The soap was invoiced by the kilo at a specified sum per kilo and the invoiced and entered value was returned by the appraiser as correct. *Held*, that duty should have been on the invoiced price and weigher's return.—T. D. 10661 (G. A. 245).

Castile soap imported and the importer claimed that an allowance should be made for shortage on weight. Duties are to be paid only upon the actual quantity of merchandise which is imported and not upon the original quantity bought and shipped.

Where, however, an importation has shrunk in weight, from evaporation or other like cause, and such shrinkage has added a percentage of value, so that the actual quantity which arrives is worth more per pound in the markets of the country from which it came than the original quantity bought and shipped was worth per pound, the actual quantity should be appraised at its increased value per pound, and duty assessed upon the value so appraised, although the invoice describes the original quantity as worth less per pound.

But to warrant such an assessment of duty the appraiser must first find that the actual quantity was worth per pound such a sum as would warrant the particular amount of duties assessed. The appraiser having found the soap to be worth the amount as given in the invoice, without having found that the value of what was left was enhanced by shrinkage, verdict and judgment was rendered in favor of the importer.—*Reiss v. Magone* (C. C.), 39 Fed. Rep., 105.

Actual Weight and Trade Custom.—In determining the weight of china clay, which, under paragraph 93, tariff act of 1897, is made dutiable by the ton, the actual weight should be ascertained. Such weights can not be regulated by an alleged trade custom. *Perkins v. U. S.* (160 Fed. Rep., 272; T. D. 28923).

Testimony as to the amount of tare that should be allowed in ascertaining the dutiable weight of china clay, taken in previous cases, is not competent evidence to establish the amount of tare to be allowed in other cases.—T. D. 31379 (G. A. 7185).

Claims for Deficiency in Weight.—The return of the Government weigher must be accepted unless clear and satisfactory evidence is furnished to overcome it. The affidavit of the city weigher, showing a deficiency in favor of the importer, *Held* not sufficient. The evidence must show that the alleged deficiency was discovered before the goods left the custody of the Government.—T. D. 12009 (G. A. 922).

Allowance for Decrease in Weight by Evaporation.—Where a cargo of coke, by reason of the evaporation of the moisture during the voyage, weighed several tons less than when shipped, duties could only be collected on the actual weight at the time of the importation and not on the weight shown by the invoice.

A regulation of the Secretary (art. 532, of 1874) that duties shall be collected according to the invoice, unless the importer accounts, by proofs, for the discrepancy between the amount shown by the invoice and the actual weight at the time of importation, is no defense to an action to recover the duties exacted on the difference between the amount actually imported and the amount shown by the invoice to have been shipped.—*Balfour v. Sullivan*, 17 Fed. Rep., 231.

Collodion Cotton.—It is impossible, it seems, to ship this commodity safely unless it is saturated with water. The water serves no purpose except to insure safe transportation. It may be said to perform the same function as the water in which foxberries were shipped, or the brine in which fish were immersed for transportation. See *U. S. v. Boak Fish Co.* (146 Fed. Rep., 104; T. D. 27864), and *In re Lincoln, Willey & Co.*, G. A. 5717 (T. D. 25409).

We think the weight of the water should have been deducted in ascertaining the dutiable weight.—Ab. 21486 (T. D. 29877).

Ratio of American and English Gallon.—In ascertaining the value of oil dutiable on an ad valorem basis, it is proper to ascertain in American gallons the quantity actually arriving in this country, and afterwards to reduce the unit of the invoice to English or imperial gallons in the relative ratio of 231 cubic inches for the American gallon, liquid measure, and 277.274 cubic inches for the English gallon. The proper value would thus be determined by multiplying the number of gallons by the price per gallon, as shown by the invoice, if found to be correct by the appraiser.—T. D. 29370 (G. A. 6830).

Dutiable Weight.

Duty to be assessed on imported merchandise upon the weight shown in the weigher's return and in the gauger's return in case of gaugable merchandise. When merchandise liable to shrinkage on the voyage of importation shows a loss of weight, the attention of appraising officers should be called to the weigher's return in order that the unit value may be advanced if necessary.—Dept. Order (T. D. 35706).

REMOVAL OF IMPURITIES BEFORE IMPORTATION.—Chili peppers shown by the invoice to have been purchased in Mexico at a certain weight including the seeds and stems, but which were imported into this country minus said seeds and stems, are dutiable on the weight of the merchandise as imported and not on the weight of the goods as purchased abroad prior to importation, in accordance with the enacting clause of the present tariff act of 1897. The abstraction of the seeds and stems from the peppers before their shipment to this country, which may have been for the purpose of saving freight as well as duties, in no manner changed the classification of the goods under the tariff act.

DISCREPANCY IN INVOICE QUANTITY.—The last clause of section 7 of the customs administrative act of 1890, which provides that "duty shall not be assessed in any case upon an amount less than the invoice or entered value," applies to value only and not to quantity.—T. D. 29387 (G. A. 6832).

Fees for Weighing and Gauging.—Charges for weighing and gauging under Revised Statutes 2920 are not abolished by the act of June 10, 1890, section 22.—T. D. 10385 (G. A. 76).

Gauge.—When a Government officer whose duty it is made by statute to measure merchandise makes his report, no measurement subsequently made by the importers can be permitted to overcome the presumption of correctness in the original measurement.—Ab. 28090 (T. D. 32396).

The protest related to an importation of brandy. The brandy was gauged at the port of New York, which gauge the importers claimed was excessive. Subsequently they procured the assent of the collector of customs at St. Paul to have the merchandise regauged.

Article 871 of the Customs Regulations of 1908 and previous regulations also provide that gauges of merchandise should be made at the first port of entry. We are of opinion that the assessment as made by the collector was correct.—Ab. 24923 (T. D. 31335).

Impurities and Dutiable Weight.—In order for impurities to be allowed for as tare, the importer must establish by a preponderance of evidence that, at the time the law was passed, the impurities claimed as demanding an allowance were other than the ordinary impurities commonly found in that kind of merchandise as traded in; and that it was the general, uniform, and definite custom of the trade not to regard such impurities as part of the goods and to make an allowance therefor. No such case is here presented.—*Wood & Selick v. U. S. (Ct. Cust. Appls.)*, T. D. 33439; (G. A. Ab. 30094) T. D. 32858 affirmed.

Illegal Ascertainment of Weight.—The surveyor of the port is by statute specially empowered to perform the duty of weighing and gauging imported merchandise. His return is conclusive on the board and the courts so long as he acts within the line of his authority and proceeds on no wrong principle. In *re Yarnell*, G. A. 3282 (T. D. 16637), and In *re Rossbach*, G. A. 5178 (T. D. 23781).

If local appraisers undertake to ascertain the weight or quantity of goods which should properly be found by a United States weigher or gauger, their action in that respect is *coram non iudice* and a nullity. *Marriott v. Brune* (9 How., 634).—T. D. 24590 (G. A. 5387).

Jurisdiction to Review Erroneous Weights.

DUTY ASSESSABLE ON IMPORTED QUANTITY.—The settled rule of law is that duty should be assessed only on the quantity of imported goods arriving at the port of entry, and not on the quantity appearing on the invoice to have been shipped from the foreign port of exportation.

ACTION OF GOVERNMENT WEIGHERS.—Where imported merchandise is dutiable by weight the action of Government weighers is not subject to review by the board so long as they act strictly within their statutory authority and proceed on no wrong principle in performing the duty imposed on them by law.

This principle, however, does not apply where such irregularities occur in the weighing of goods as probably would lead to erroneous results, and in such case the board will undertake to correct the weights returned by the Government weigher in accordance with the facts as shown by the evidence.

The onus is on the importer, however, to furnish the board with evidence satisfactorily showing the weight of imported merchandise when landed at the port of entry.—T. D. 28249 (G. A. 6620).

Weight of Java Picul.—The weight of the Java Picul is 136 pounds.—T. D. 17811 (G. A. 3745).

Liquors in Bottles.—The practice of gaugers making returns in connection with the importation of liquors in bottles, not being authorized by the regulations, will be discontinued, and the returns will hereafter be made by the appraiser on the invoices.—Dept. Order (T. D. 35371).

Gauge of Spirituous Liquors.—Imported spirituous liquors should be assessed for duty on the basis of their condition at the standard temperature of 60° F., prescribed in the internal-revenue laws (secs. 3249, 3250, Rev. Stat.), and adopted by the tariff act of 1897 (par. 290); and correction of volume is rightly made according to the extent of the difference between this standard temperature and the natural temperature of the liquors.

The conventional gauge of various brands of spirituous liquors as promulgated by the Secretary of the Treasury is not to be followed arbitrarily in all cases, and actual gauge may be followed when found to vary from the conventional gauge. But the latter gauge, being based on repeated measurements of well-known and frequently imported brands of liquors, may usually be taken as approximately correct; and a casual variation therefrom indicated by the gauge of but a single bottle out of 10 cases is held not to be sufficient evidence to warrant a departure from the conventional gauge.—T. D. 24017 (G. A. 5214).

Imported liquors are dutiable on the basis of their condition and measurement at the standard temperature of 60° F. prescribed by the Secretary of the Treasury, which is the rule adopted in gauging liquors under the internal-revenue laws. This rule seems reasonable and valid.—T. D. 31796 (G. A. 7253).

Moisture in Wood Pulp.—Where as ascertainment is made by a Government chemist of the amount of moisture in chemical wood pulp, which is based

upon 10 per cent of the bales included in the importation, and this is accompanied by a description of the method employed, the result reached by him is not refuted by an analysis made by a chemist employed by the importers, reaching a different result, there being no preponderance of evidence as between the analyses made by the two chemists. There must be a clear preponderance of the evidence to justify making a reliquidation.—*T. D. 27543* (G. A. 6413).

Moisture Absorbed During Voyage.—Wool weighed in England and the invoice gave the weight there. The weight here was greater than that in the invoice. Proof that wool became heavier by from 1 to 5 per cent by absorption of moisture while at sea. Although increased weight may have accrued from moisture or any other action of the elements—except being exposed to or injured by sea water—it was liable to pay duty at this port on the weight here. *U. S. v. Choteau* (32 Hunt Mer. Mag., 715), 25 Fed. Cas., 420.

Sugar—Drainage.—Under this act duty is to be assessed not upon the weight of sugar in the invoice but the weight when landed, although no express direction is contained in any law to make an allowance for loss of weight of sugar by drainage, and although the aggregate value is thus reduced below the aggregate cost named in the invoice.—*Marriott v. Brune*, 9 How., 619, 632.

Weight of Silk.

The examiner weighed but one piece of the silk goods, though these were contained in two separate cases, the silks differing in color and in weight. The evidence clearly rebuts the presumption of correctness attaching to this official's finding, and shows, too, that the weight as stated in the importer's invoice to have been more fairly and justly determined.—*Sears, Roebuck & Co. v. U. S.* (Ct. Cust. Appls.), *T. D. 33035*; (G. A. Ab. 27934) *T. D. 32333* reversed.

WEIGHTS DETERMINED BY CUSTOMS OFFICIALS.—In the absence of material evidence to the contrary, the method employed by customs officials to determine the weight of commodities will be presumed to be correct.

SILK-VELVET RIBBONS AND WOVEN-SILK FABRICS.—The commodities in controversy were silk-velvet ribbons and woven-silk fabrics. The importers having failed to show that the customs officials weighed as a test an insufficient quantity of the goods, or that the percentage actually weighed was not properly stripped, or that the weight of the percentage that had been properly stripped before weighing was incorrectly reported, or that the method employed to select, strip, and weigh the goods was ill adapted to secure a result at least approximately correct, the official weights as reported will be here presumed to be correct, and this importation was properly assessed for duty at \$1.50 per pound and 15 per cent ad valorem under paragraph 386, tariff act of 1897.—*U. S. v. Gage Bros. & Co.* (Ct. Cust. Appls.), *T. D. 31503*; (G. A. Ab. 23284) *T. D. 30615*, reversed.

Spanish Libra.—Weight, Puerto Rico libra, 1.0161 pounds.—*T. D. 18870* (G. A. 4067).

Actual Weight of Ad Valorem Goods to be Taken in Spite of Contrary Trade Custom.—Ad valorem duties, where they are required to be assessed on weight, must be so assessed on the actual weight when landed, as ascertained by the proper officers.

Appraisers determine the actual market value or wholesale price of the merchandise in the principal markets of the country from which the same were imported, but they have no authority to determine the weight or quantity of the importation.

Under section 18 of the act of June 30, 1864 (13 Stat., 202), teas imported from London were subject to a duty of 25 cents per pound and also 20 per cent ad valorem.

When teas were bought in England for export, what is delivered as 100 pounds actually weighs more, and importers in this country reckon their profits with reference to the difference between the weight there and here. *Held*, that the customs officers here were not bound by the invoice weight.

Where the United States weigher ascertained the exact weight of the teas, the collector was bound to adopt that quantity and the value ascertained by the appraiser as the legal basis for the assessment of duties.—*U. S. v. Nash* (4 Cliff., 107), 27 Fed. Cas., 75.

Tobacco is Dutiable on Actual Weight, Not That Shown by Revenue Stamps Affixed.—Duty can be collected only upon the amount of merchandise actually arriving in our ports. This rule applies to tobacco in packages equally with other merchandise, and it is error for the collector to take duty on the basis of the weight indicated by the internal-revenue stamps affixed to the packages, instead of the weight returned by the United States weigher.—*T. D. 24038* (G. A. 5222).

Wantage.—Allowance for wantage to be made on importations of wines and liquors.—Dept. Order (*T. D. 27379*).

Weight—When Return of United States Weigher is Conclusive.—The weigher's return as to sultana raisins held to be conclusive, though only 10 boxes out of 650 were weighed and though there was a strong presumption that duty was assessed on an excessive weight.—*T. D. 10882* (G. A. 377).

Wool in Transitu.

NO ALLOWANCE FOR NORMAL ABSORPTION OF MOISTURE.—In order to sustain a claim for allowance of moisture absorbed by wool on the voyage of importation, the fact that there is an increase of about $1\frac{1}{2}$ per cent in the landed weight over that of the invoice weight, which is the natural and normal amount of absorption by the wool, is not sufficient, but it must appear that the increased weight is due to the excessive and unusual absorption of sea water or otherwise.

BURDEN OF PROOF.—Even in the event of a holding to the contrary the burden would still be on the protestant to show that the word "wool," as used in commerce and consequently in the tariff act, means wool without natural or normal absorption of moisture, and that it is the uniform custom of the trade to buy and sell the wool upon the basis of the invoice weight without regard to the landed weight of the merchandise.—*T. D. 27800* (G. A. 6512).

Wool Packed with Hides.—Wool cost less than 12 cents per pound in Buenos Aires, whence it was imported, and was packed in hides which were of the same value as the wool, and the bales were paid for at the gross weight, including the hides, which were an article of value here. *Held*, that the appraisers ought not to include the hides in their gross estimate of cost and then to exclude their weight in ascertaining the cost of the wool per pound. *Saxonville Mills v. Russell* (1 Lowell, 450; 11 Int. Rev. Rec., 207), 21 Fed. Cas., 595.

Weigher's Return Less Than Invoice Weight.—The collector had before him the invoice, the entry, and the weigher's certificate, and it was apparent therefrom that the statement of the gross weight of the wire in the invoice and entry was incorrect and that the true weight less tare, which is the dutiable weight, was before him in the manner required by law. A case of manifest clerical error was thus presented and a shortage in weight of the shipment as invoiced appeared. *U. S. v. Nash et al.* (27 Fed. Cas., 750); *Marriott v. Brune* (50 U. S., 633).—*U. S. v. Bush & Co.* (Ct. Cust. Appls.), *T. D. 34187*; (G. A. Ab. 31640) *T. D. 33263*, rehearing denied.

SPECIAL ACTS.

BONDS FOR DUTIES.

Act of June 20, 1876, as amended by section 70 of the Act of August 28, 1894.

[U. S. Stat. L., Vol. XIX, p. 60.]

CHAP. 136.—*An Act relating to the execution of customhouse bonds.*—When any bond is required by law to be executed by any firm or partnership for the payment of duties upon goods, wares, or merchandise, imported into the United States by such firm or partnership, or for any other purpose connected with the general transaction of business at any customhouse, the execution of such bond by any member of such firm or partnership, in the name of said firm or partnership, shall bind the other members or partners thereof, in like manner and to the same extent, as if such other members or partners had personally executed the same. And any action or suit may be instituted on such bond against all the members or partners of such firm, as if all of the members or partners had executed the same.

Bonds of Copartnerships.—Names of partners unnecessary in body of customs bonds executed under act of June 20, 1876, as amended. Article 1545 of Customs Regulations of 1899 amended.—Dept. Order (T. D. 23598).

Bonds.—Applications for cancellation and extension of bonds must state grounds verified by oath or affirmation.—Dept. Order (T. D. 23200).

Bonds Reported for Prosecution Can Not Be Canceled by the Collector Reporting Them.—After a bond has been reported by a collector of customs for prosecution, he can not thereafter, on presentation of the proper proofs, cancel the same.

In all such cases application for relief should be made to the Solicitor of the Treasury, through the United States attorney charged with the prosecution of the bonds.—Dept. Order (T. D. 1558).

Customs Broker.—A clerk of a firm of customs brokers, acting under a power of attorney, may transact customs business in firm's name under certain conditions and with certain qualifications. Modification of Synopsis 20056.—Dept. Order (T. D. 20180).

Cancellation of Bond by Forged Notes.—Two customhouse bonds were lodged in the bank in the usual course of business for collection. The bank discounted for the principal obligor certain notes for the payment of these bonds and the proceeds were carried to the credit of the United States by the bank, in discharge of the bonds, and it turned out that the notes were forgeries practiced by the principal. *Held*, that the bonds were discharged and that there was no remedy in equity to acquire a priority on the assets of the principal.—U. S. v. Rousmaniere's Admr's, 2 Mason, 373; 27 Fed. Cas., 905.

Cancellation of Bond.—If a collector cancels a bond for duties without receiving payment of the amount of the duties, in connivance with the debtor, the cancellation is void and the bond may still be declared upon as a subsisting deed, for the cancellation is, in such a case, a flagrant violation of duty.

A collector is not at liberty to receive anything but money of the United States or foreign gold or silver coin made current in payment of duties. If he receives a check on a bank in payment, it is at his own peril, and if the check

is not paid the bond is not discharged; a fortiori, it is not discharged by the receipt of a memorandum check.—*Johnson v. U. S.*, 5 Mason, 425; 13 Fed. Cas., 868.

A collector is not authorized to receive anything in payment of a duty bond but the lawful money of the United States or foreign gold or silver coins made current by law. If he receives a check this is not payment until the check is paid.

A receipt of a collector upon a duty bond acknowledging payment and satisfaction of the bond does not operate as an estoppel. It is open to explanation and is no bar to a suit on the bond if it be not paid.

The cancellation of a bond does not, per se, destroy it when it is canceled through fraud or evident mistake, but it may be declared upon as a good and subsisting obligation.—*U. S. v. Williams*, 1 Ware, 173, 175; 28 Fed. Cas., 678.

Claims of the United States Against Estates of Insolvent Debtors.—

Where the Secretary releases an insolvent debtor under the acts of Congress, upon the condition of the assent of the sureties to his release, without prejudice to their liability, the assent must be by the parties if living, and if dead by their personal representatives. An assent by the heir of a surety is not sufficient.

Where a judgment was obtained upon a joint and several bond for duties at the customhouse in a joint suit against the obligors, and afterwards one of the obligors died, it was held that no action at law lay against the administrator of the deceased debtor, but only against the surviving judgment debtors.—*U. S. v. Cushman*, 2 Sumn., 310; 25 Fed. Cas., 732.

Where sureties bind themselves jointly and severally as principals in a bond, there is no difference as to their liability in equity for the debt between them and the principal debtor for whom they are sureties.

In such a case, as between the United States and the obligors, all of them are deemed principal debtors.

On a bill in equity on the some bond, *Held* that the United States were entitled to maintain a suit in equity for the recovery of the debt out of the assets of the deceased judgment debtor, whose estate was also insolvent, in virtue of their general priority in cases of insolvency.—*U. S. v. Cushman*, 2 Sumn., 426; 25 Fed. Cas., 734.

Conditions of Bond.—Goods imported July 2, 1812. Bond given with a penalty of \$7,000 upon condition to be void upon payment of \$3,500 or the amount of duties to be ascertained. Under the act of July 1, 1812 (2 Stat., 768), the goods were subject to double duties, amounting to \$6,168.35. On the day the bond became due the obligors paid single duties \$3,084.18 and tendered the collector the further sum of \$415.82, making \$3,500, in discharge of the bond. Tender refused and suit brought on the bond for the double duties. *Held*, that a bond given for the payment of duties in the alternative is discharged by the performance of either part of the condition at the election of the obligor, although the sum named in the condition be less than the duties.—*U. S. v. Thompson*, 1 Gall., 388; 28 Fed. Cas., 90.

The bond given by the importers, in which they expressly stipulate to pay the amount which might be found due upon the final liquidation of the entry over and above the amount of the estimated duties already paid, is a distinct notice to them that a further adjustment of the duties on the entry was to be made and that they might be called upon for a further payment.—*U. S. v. Cobb*, 11 Fed. Rep., 76.

Duties Paid to Confederacy not Legal.—In an action on a bond given for the payment of duties on goods deposited in the public stores at Savannah, it is

no defense that the principal actually paid, under compulsion, the amount of the duties to the Confederate collector during the occupancy of Savannah by the Confederate authorities.

Nor is it a defense that there was no United States collector of customs or other agent at Savannah, to whom payment should be made, during the three years within which the duties were to be paid under the provisions of the bond.—*U. S. v. Low* (13 Int. Rev. Rec., 124; 10 Am. Law Reg. (N. S.), 455), 26 Fed. Cas., 1006.

Entry of Goods by Attorney.—Requirements necessary to constitute a valid power of attorney by a corporation for the transaction of customs business in the corporate name. The owner's oath subscribed by such authorized attorney invalid unless such attorney be one of the officers of the corporation or a stockholder therein.—Dept. Order (T. D. 19174).

Erasures.—An erasure or interlineation apparent on the face of a deed does not not avoid it unless shown to have been made fraudulently or without the assent of those affected.

A bond is not avoided by erasing the name of one obligor and inserting the name of another, after delivery, by consent of all parties, proved by parol.—*Speake v. U. S.*, 9 Cranch, 28, 36.

Execution of Customs Bonds.—Requirements necessary to the proper execution of bonds. Qualifications of corporations and individuals as principals and sureties. Merchandise not appearing by invoice, bill or lading, and manifest to be destined for immediate exportation must be regularly entered for warehouse and exportation in bond. Perishable goods may be transported under consular seal and the immediate transportation acts, but can not be deposited in bonded warehouse. The question as to whether certain classes of merchandise are or are not perishable should be determined by the circumstances peculiar to each particular case.—Dept. Order (T. D. 20904).

Execution of Bonds by Attorneys.—A person may execute a customhouse bond as attorney in fact for both principal and surety thereon.—Dept. Order (T. D. 19105).

Judgment on Bonds Against Partners.—Eight bonds for the payment of duties were given by Samuel Thompson and Jonah Thompson. Suit brought on each bond. Five suits against Samuel Thompson and Jonah Thompson and judgment on each. On the remaining three separate suits were brought against each and judgment against each. On December 13, 1832, Jonah was released by the Secretary under the act of March 2, 1831 (4 Stat., 467). On proceeding to revive judgment against Samuel Thompson, held that where the joint judgments were rendered the release of one of the defendants operated as a release of the other, that the separate judgments against Samuel Thompson are not released by the release of Jonah.—*U. S. v. Thompson, Gilp.*, 614; 28 Fed. Cas., 92.

Where, in an action of debt brought by the United States against two defendants on a bond, it was set up, in defense, that the bond was given for an antecedent debt consisting of duties due at the customhouse, the payment of which was secured by a bond executed by the defendants and another person, that more than 20 years had elapsed after the giving of the first bond before the execution of the second, that no demand of payment had been made in the meantime, that the defendants executed the second bond without a knowledge of this defense, and that they were advised by the agent of the United States that there was no defense to the demand. Held, that this was no defense to the action.—*U. S. v. McKewan*, 4 Blatchf., 383; 26 Fed. Cas., 1121.

Judgment on a bond for the payment of duties can not exceed the penalty thereof and interest from the breach, although the sum actually be larger.—U. S. v. Arnold, 1 Gall., 348; 24 Fed. Cas., 868.

In an action upon a duty bond the United States are entitled to a judgment at the return term.—U. S. v. Johns, 1 Cranch (C. C.), 284.

Justification by Corporate Sureties.—Form of justification by corporate sureties authorized to transact business under the act of August 13, 1894, when undertaking the suretyship on special bonds for the examination and appraisalment of machinery at place of delivery or destination. Modification of T. D. 22544.—Dept. Order (T. D. 22647).

Form of justification of corporate sureties authorized to transact business under the act of August 13, 1894, when undertaking the suretyship on special bonds for the examination and appraisalment of machinery at place of delivery or destination.—Dept. Order (T. D. 22544).

Liability of Surety.—The importer is liable for the duties but the bond is discharged as to the surety by the performance of one of its alternative conditions.

Bond given conditioned that the importer would pay \$425, that being the estimated duty based upon the invoice, or the amount which should be subsequently ascertained to be due, or that he should within three years withdraw and export them or transport them to a Pacific port. That sum paid and the goods withdrawn, but it was found on liquidation that the duty was \$676. Suit brought against surety. *Held*, that he was not liable.—*Dumont v. U. S.*, 98 U. S., 142.

If the surety of the consignee on a customhouse bond pays the debt he has no remedy against the owner if the latter did not request the surety to sign the bond, but the remedy of the surety is against the consignee only.—*Knox v. Devens*, 5 Mason, 380; 14 Fed. Cas., 801.

Under section 5 of the act of July 14, 1832, a surety is liable on a bond given for duties under \$200.—U. S. v. Linn, Crabbe, 307; 26 Fed. Cas., 973.

Power of Attorney.—A trustee for a customs broker who has gone into assignment may give power of attorney to person to transact customhouse business incident to trusteeship.—Dept. Order (T. D. 15507).

Opinion of the Solicitor of the Treasury as to the authority of an officer of a corporation for giving a power of attorney to another person to make entry of imported goods, and as to the authority of a member of a copartnership to give a similar power to another person.—Dept. Order (T. D. 10124).

Where a sufficient power of attorney is filed at one port, it is not necessary to file a duplicate of it at other ports, but a copy of it duly certified by the collector of the port where it is filed should be regarded as sufficient evidence of the execution of the original power.

[Amendment, February 26, 1889. When such powers of attorney are revoked, the collector at the port of revocation should promptly notify the collector to whom certified copies had been transmitted.]—Dept. Order (T. D. 9233).

No power of attorney or written authority is necessary for officers of chartered clubs or incorporated companies to make entry of imported merchandise.—Dept. Order (T. D. 9001).

Congress by act of June 20, 1876, Stats., vol. 18, p. 60, provided that when any bond is required by law to be executed by any partnership for the payment of duties, the execution of such bond by any member of the partnership, in the name thereof, shall bind the remaining partners in like manner, and to the same extent, as if such other partner or partners had personally

executed the same, thus departing from the strict rule of the common law. The customs act of 1823 contained a like provision, which dropped out of the law on the revision of the statutes.

It does not follow that, because a bond so executed is valid as a partnership obligation, that one executed by a stranger in the name of the firm by authority, under seal of the acting partner, would also be valid to bind the partnership. The statute, being in derogation of the common law, must be held to a strict construction. It would not be extended by the courts beyond the strict authority conferred. 3 Dall., 367; O. McLean, 592; 12 Md., 464; 17 Ib., 45.

The department should require in cases similar to the one stated that the powers of attorney have the signatures and seals of all the members of the partnership.—Dept. Order (T. D. 5580).

The Authority Given to One Member of a Firm to Execute Bonds in Behalf of the Firm Can Not Be Delegated.—Section 25 of the act of March 1, 1823, providing that one member of a firm entering (as principal) into a bond for duties in the name of the firm binds the other partners, is a statutory provision in derogation of the common law, and must therefore be strictly limited in its application to the authority specifically granted. It can not, therefore, be construed as authorizing any one member of a firm to delegate the authority given him thereunder to an attorney, so as to empower the latter to execute customhouse bonds in the name and behalf of such firm. (Letter to surveyor at St. Louis, dated Mar. 22, 1873. Customs Division.)—T. D. 1483.

Partners, Bonds of.—The bond for duties is required to be given by all persons who are importers whether they be partners or part owners, and the collector is not authorized to take the separate bond of one of the importers in extinguishment of the joint liability of all.—*Meredith v. U. S.*, 13 Pet., 486, 495.

Rights of Surety.—Though the United States have, in the Treasury, money belonging to a surety, they may agree to hold it without a final appropriation to the payment of the debt, and bring an action against the principal for the benefit of the surety. This is in accordance with the purpose of section 65 of the collection act.—*Meredith v. U. S.*, 13 Pet., 486, 496.

If a creditor, whether the United States or an individual, give time to the principal in a bond prior to the breach of the obligation, without the consent of the surety, the surety is discharged, and he may set up the defense at law aliter, if the time be given after the breach, for then the only remedy of the surety is in equity.

If the law prescribes the terms of a bond to be taken, and one be taken variant therefrom, it is void, so far at least as it is variant. But the officers of the Government may, without any law, take securities from debtors to the public for what they may owe.—*U. S. v. Howell*, 4 Wash. (C. C.), 620; 2 Am. Lead. Cas. (5th ed.), 419; 26 Fed. Cas., 394.

A surety on a customhouse bond who has paid it has the same priority as the United States against the estate of his principal in the hands of his assignee.—*U. S. v. Hunter*, 5 Mason, 62; 26 Fed. Cas., 437.

Under section 65 of the act of 1799, the surety having discharged the bond for duties, is entitled to no other advantages secured to the United States except the preference and priority reserved to the United States, to be paid out of the estate of the principal. He is not entitled to proceed against the person and effects of the executors and assignees in the cases mentioned in said section, to require special bail, to demand judgment at the first term, to sue in the Federal courts when the parties are citizens of the same States.

Where the surety has paid the bond he can not maintain assumpsit in the name of the United States against the assignee of the principal. The only

remedy is for money laid out, etc., on the bond in his own name, under the privilege granted to him by section 65, act of 1799.

Where one obligor, though a surety, pays the bond, he can not maintain an action on it in the name of the obligee against his coobligors, nor an action for money laid out and advanced except in his own name.—U. S. v. Preston, 4 Wash. C. C., 446; 27 Fed. Cas., 616.

Signatures.—Entries may be signed by attorney for principal. Bonds require written signature of each member of firm.—Dept. Order (T. D. 15485).

State Licenses not required of surety companies doing business with the United States under act of August 13, 1894, except where company executes bonds within the State.—Dept. Order (T. D. 30230).

Suit on Bond.—In a suit on a bond for the recovery of duties the defendant, filing an affidavit stating that there was error in the liquidation of the duties, in that the vessel belonged to citizens of the United States and not foreigners, is under 1 Stat., 627, section 65, entitled to a continuance.—U. S. v. Willing, 28 Fed. Cas., 695.

Chinese Citizens as Sureties--Hawaii.—Chinese persons who are citizens of the former Hawaiian Republic on August 12, 1898, and who have not since abandoned or lost their rights as such, are citizens of the United States, and, if residents of the Territory of Hawaii, may be accepted as sureties on customs bonds.—Dept. Order (T. D. 22776).

Surety.—Member of a copartnership can not be accepted as surety on a six months' bond for the delivery of unexamined packages.—Dept. Order (T. D. 17913).

Bond Illegally Demanded.—The law imposed a duty of 15 per cent ad valorem on casks of sirup of sugar cane. The collector, under instructions from the Secretary, required the importer to give a bond for the above, or, should it be required, of 3 cents a pound. *Held*, that the instructions of the Secretary not in accordance with law do not justify the illegal acts of the collector.—Tracy & Belastier v. Swartwout, 10 Pet., 80.

CANAL ZONE.

AN ACT Fixing the status of merchandise coming into the United States from the Canal Zone, Isthmus of Panama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all laws affecting imports of articles, goods, wares, and merchandise, and entry of persons into the United States from foreign countries shall apply to articles, goods, wares, and merchandise and persons coming from the Canal Zone, Isthmus of Panama, and seeking entry into any State or Territory of the United States or the District of Columbia.

Approved, March 2, 1905.—Dept. Order (T. D. 26163).

Importations from Panama Canal Zone.—In order to give the Supreme Court jurisdiction on the ground of a constitutional question, such question must be real and substantial and not a mere claim in words. The contention that duty should not be imposed on merchandise brought from the Panama Canal Zone into the United States does not raise such a question.

In view of the treaty between the United States and the Republic of Panama (33 Stat., 2234) and the various acts of Congress relating to the Panama Canal Zone, merchandise brought into the United States from such zone was properly subjected to duty as provided in the act of March 2, 1905 (33 Stat., 843).—*Kaufman v. Smith* (U. S.), T. D. 30448; T. D. 30254 (C. C.) affirmed.

Drawback on Goods Shipped to the Canal Zone.—Drawback allowed under section 30, tariff act of 1897, on shipments to the Canal Zone.—Dept. Order (T. D. 28315).

CANADIAN RECIPROCITY.

Reciprocity Between the United States and Canada.

1. Section 2 of an act entitled "An act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes," approved July 26, 1911, 3:10 p. m., is as follows:

"SEC. 2. Pulp of wood mechanically ground; pulp of wood, chemical, bleached, or unbleached; news print paper, and other paper, and paper board, manufactured from mechanical wood pulp or from chemical wood pulp, or of which such pulp is the component material of chief value, colored in the pulp, or not colored, and valued at not more than 4 cents per pound, not including printed or decorated wall paper, being the products of Canada, when imported therefrom directly into the United States, shall be admitted free of duty, on the condition precedent that no export duty, export license fee, or other export charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise), or any prohibition or restriction in any way of the exportation (whether by law, order, regulation, contractual relation, or otherwise, directly or indirectly), shall have been imposed upon such paper, board, or wood pulp, or the wood used in the manufacture of such paper, board, or wood pulp, or the wood pulp used in the manufacture of such paper or board."

DECISIONS UNDER THE ACT OF JULY 26, 1911.

Time of Taking Effect.

2. The provisions of the section above quoted took effect immediately on the approval of the act.

3. The Dominion of Canada does not include the Province of Newfoundland nor the Territory of Labrador.—Dept. Order (T. D. 31772) amended by T. D. 33209.

Paper from Norway.—The tariff act of 1913 was designed to be a complete revision of the tariff laws of the country, and its wording very clearly shows that it was intended as a substitute for all prior tariff legislation not saved by the act itself. The rule seems to be well settled that an act of that character must be held to have repealed all prior laws not expressly continued in force and relating to the same subject. And, so, the tariff act of 1913 repealed section 2 of the Canadian reciprocity act.

Paper imported from Norway, answering to the description of section 2 of the Canadian reciprocity act and imported under the conditions therein set out, is not, by virtue of the favored-nation clause in a subsisting treaty with Norway, admissible free of duty under said section, because said section was repealed by the tariff act of 1913. The paper is dutiable as "wrapping paper not specially provided for" under paragraph 328.—Dow Co. v. U. S. (Ct. Cust. Appls.), T. D. 36902.

Wood Pulp, Paper, and Paper Board.—Wood pulp, paper, and paper board manufactured in Canada wholly or in part from materials imported into that country from other countries are not entitled to free entry under section 2, act of July 26, 1911.—Dept. Order (T. D. 32156).

Wood Pulp—Printing Paper.—Instructions as to the assessment of duty on wood pulp and printing paper, under paragraphs 406 and 409, tariff act of 1909, produced from wood cut on certain Dominion lands in Canada.—Dept. Order (T. D. 32238).

Canadian Wood Pulp and News Print Paper.—The question is whether there was by a Canadian rule or regulation any prohibition or restriction of exportation either by contractual relation or otherwise, directly or indirectly, applicable to this merchandise; whether the act of July 26, 1911, controls,

Section 13 of the Canadian woods and forest regulations did contain such a prohibition, and, so far as the record discloses, it remained in force until December 31, 1912, when, by an order in council, the prohibition was not to be enforced and provision was made that the prohibition was to be deemed inoperative from May 1, 1911. The merchandise here, as the record shows, was cut from the lands described in that order and was manufactured, in part at least, prior to December 31, 1912. Our statute has its own field of operation, and this operation is not to be defeated by another authority. Under our statute and under the facts shown here this wood pulp and news print paper were not entitled to free entry.—*U. S. v. Laurentide Paper Co.* (Ct. Cust. Appls.), T. D. 35157; (G. A. Ab. 34940) T. D. 34219 reversed.

Wood Pulp Manufactured Under a Special Agreement with the Province of Ontario.—The question for determination is whether the written contracts between the appellee here and the Province of Ontario, Canada, impose any restrictions upon appellee's right to export wood pulp manufactured from pulp wood cut upon Crown lands. *Held*, that the contracts impose certain conditions, some new, some old, to be complied with by the appellee as a continuing consideration for the abrogation of the preexisting contractual prohibition of export of such pulp wood and the enjoyment of the grant of the right to export the same; that these conditions, whether precedent or subsequent, impose burdens upon and result in a restriction of the export of the pulp wood from which the importations were manufactured; and therefore that free entry can not be had under the provisions of section 2 of an act of Congress entitled "An act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes," approved July 26, 1911.—*U. S. v. Spanish River Pulp & Paper Mills (Ltd.)* (Ct. Cust. Appls.), T. D. 34426; (G. A. 7490) T. D. 33707 reversed.

Wood pulp and news print paper imported from Canada and manufactured from wood cut on Crown lands in the Province of Ontario is free of duty under section 2 of the act of July 26, 1911, entitled "An act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes," when it is shown that by special grant or agreement of the Canadian Government all restrictions of whatever nature have been removed against the exportation of such wood pulp or news print paper or the wood from which the same has been manufactured.—T. D. 33707 (G. A. 7490); reversed by T. D. 34426.

Most-Favored-Nation Treaty Clauses.—The department has acquiesced in the decision, dated May 12, 1913, of the United States Court of Customs Appeals (T. D. 33434) in the cases involving the most-favored-nation clauses of various treaties as affected by section 2 of the act of July 26, 1911.

Attention is invited to the fact that the said decision does not in terms apply to importations from other countries than Norway, Russia, Austria-Hungary, and Germany, and that the treaty of commerce and navigation between the United States and Russia of 1832 expired on December 31, 1912.

In view of the expiration of the treaty with Russia, the principle of the court's decision will not, at this time, be applied to imports from that country made since December 31, 1912.

The applicability of the principle of the said decision to imports from other countries than Norway, Austria-Hungary, and Germany will be the subject of further instructions.—Dept. Order (T. D. 33656).

Section 2 (Wood Pulp), Act of July 26, 1911.—The sections of the Canadian reciprocity act are separable both in form and in character. The act contains no words that specifically or impliedly make the operation of section 1

dependent upon the operation of section 2 or the operation of section 2 dependent upon the operation of section 1, and section 2 is valid and in force.

The words in this section that affix a condition precedent make the condition applicable to the given, specific, particular importation, and not to any and all possible importations similar in character from any other part of the Dominion of Canada.

The wood pulp of this importation and the pulp wood from which it was manufactured were entitled to exportation from Canada into the United States free of any export charge or prohibition or restriction upon exportation; and it accordingly falls directly within the provisions of section 2 of the act and is thereby entitled to free entry.—*Cliff Paper Co. v. U. S.* (Ct. Cust. Appls.), T. D. 33435; (G. A. 7423) T. D. 33141 affirmed.

Section 2 of the So-Called Canadian Reciprocity Act Still in Force.—Section 2 of the act of Congress of July 26, 1911, entitled "An act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes," is valid and still in force as a law of Congress.

Pulp imported direct from Canada which was made from wood grown on private lands upon which no export duty, license fee, or other export charge or restriction of any kind has been imposed, is free of duty under said section 2, notwithstanding goods of like character made from wood grown on Crown lands are dutiable.

Where free and dutiable goods are indiscriminately mixed, the collector may separate them for dutiable purposes if they are capable of separation by testimony. *Myers v. U. S.* (140 Fed., 648).—T. D. 33141 (G. A. 7423).

Most-Favored-Nation Treaty Clauses.

Free importation is claimed for certain chemical wood pulp and sulphide wood pulp from Norway, Russia, Austria-Hungary, and Germany. The claim is made on the ground that by virtue of the favored-nation clause in existing treaties, when that clause is construed in connection with section 2 (wood-pulp section) of the act of July 26, 1911, entitled "An act to promote reciprocal trade relations with the Dominion of Canada and for other purposes," the merchandise appears as entitled to free entry.

It was conceded at the hearing that Canada is a nation for treaty purposes; that there is nothing in the language of the several treaties in question with the several countries to call for any distinctions to be made between the countries represented in the protest; and it was further conceded that said section 2 of the act of 1911 is operative, though Canada refused to avail itself of the option to establish reciprocity as to any other possible importations provided for in other sections of the act.

TREATIES AND THE COURTS.—By the Constitution a treaty is binding as a law of the land, and since it is the function of the courts to construe and apply the law, it becomes a court's duty whenever conditions arise making a treaty applicable to declare the force and effect of that treaty. *Foster v. Neilson*, 27 U. S. (2 Pet.), 523.

Courts may not seek to enforce a treaty which is executory in its character, for legislation is needed to give effect to executory provisions; but courts will as to a self-executing provision in a treaty enforce this whenever the occasion and conditions arise that attach the self-executing provision to existing facts. *Taylor v. Morton* (2 Curtis, 453); *Bartram v. Robertson* (122 U. S., 116); *Whitney v. Robertson* (124 U. S., 190).

A SELF-EXECUTING AGREEMENT.—The provision of the favored-nation clause is, "if either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other

party." This provision is self-executing, for the privilege could not "immediately become common" to the other party to the agreement if it depended upon some future act by another or upon legislation to make the provision effective.

SECTION 2, ACT OF JULY 26, 1911.—Section 2 (wood-pulp section) of the act of July 26, 1911, was enacted with a full understanding that under that section there would be a question for determination whether the provisions of existing treaties with favored nations would attach, and whether by the very force of section 2 like commodities from other nations having the favored-nation clause in treaties are to be admitted on the same terms with the given commodities brought in from Canada. It must be recognized that the favored-nation clause has for its field of operation precisely that of cases where and when the lawful authority has granted a new privilege to some other nation.

QUESTION OF A CONSIDERATION.—Section 2 is a provision of the act standing by itself. There is nothing contained in it to indicate a consideration passing, nor is there a suggestion of aliunde evidence of the existence of a consideration. It stands wholly independent of the reciprocity provision of the act.—*American Express Co. v. U. S.* (Ct. Cust. Appls.), T. D. 33434; (G. A. 7354) T. D. 32423 reversed.

CONSTRUCTION OF TREATIES.—Treaties are contracts between independent nations, and in their construction words are to be taken in their ordinary meaning as understood in the public law of nations.

A treaty is regarded as equivalent to an act of Congress whenever it is self-executing; that is, when it operates of itself without the aid of legislative action. Treaties and statutes are construed so that both may be given effect when this is possible.

Reciprocity treaties with foreign countries do not bind the United States to extend to such countries, without compensation, privileges which they had conceded to another foreign country for a valuable consideration.

TAYLOR *v.* MORTON (23 Fed. Cas., 784).—The doctrine of *Taylor v. Morton* (23 Fed. Cas., 784) discussed, which held that a contention made under the Russian treaty of 1832, claiming a reduction of duties on imported wool, involved under that treaty the exercise of a political power which belonged to Congress, and must be determined by legislative action, and not by the courts.

DOCTRINE OF THE TREASURY DEPARTMENT.—The doctrine announced by John Quincy Adams in 1815, holding that a treaty conferring on one foreign country a gratuitous privilege would operate under favored-nation clauses to be extended to other nations, seems to be indorsed by the Treasury Department, but, *Quære*, whether by the courts is not decided.

CANADA NOT A COUNTRY, NATION, OR STATE.—The words "country, nation, or state," are used to represent an organized body politic, and mean the same thing as country, which embraces all possessions of a foreign state, however widely separated, which are subject to the same supreme executive and legislative control. Hence Canada is not a country, but only a part of the country of Great Britain.

THE TREATY-MAKING POWER CAN NOT MAKE TARIFF ACTS.—Treaty-making powers of the United States can not be exercised in violation of the Constitution. Hence the President and the Senate can not, by treaty, evade the right of the House of Representatives to unite in making tariff laws regulating the rates of duty imposed on imported merchandise. The effect of this would be to compel Congress to destroy its whole tariff system.

SECTION 2, ACT OF JULY 26, 1911, IS A VALID LAW AND REMAINS UNREPEALED.—While the proposed treaty between the United States and Canada failed for

want of ratification, section 2 of the act of July 26, 1911, entitled "An act to promote reciprocal relations with the Dominion of Canada, and for other purposes," and making free of duty pulp wood and paper of the kind there described, when exported from Canada, was left standing as a law unrepealed.—T. D. 32423 (G. A. 7354).

**IMMEDIATE-TRANSPORTATION ACT OF JUNE 10, 1880 (21 STAT., 173;
U. S. COMP. STAT., 1901, P. 1962).**

Entry.—Merchandise covered by various bills of lading naming consignees at port of destination can not be included in one immediate-transportation entry at port of arrival.—Dept. Order (T. D. 30065).

Bills of Lading.—Regulations governing bills of lading required upon entries for immediate transportation.—Dept. Order (T. D. 29867).

Immediate-Transportation and Consular-Seal Shipments.—Merchandise shipped under immediate-transportation entry or consular seal to be entered at the port of destination only.—Dept. Order (T. D. 29608).

Storage Charges.

EXPENSE OF ADMINISTERING PUBLIC LAW.—The burden of administering every law shall be borne by the Government unless otherwise expressly provided.

COPY OF QUADRUPLICATE INVOICE.—The importer is furnished two of the quadruplicate invoices provided for by section 4 of the act of June 10, 1880, one of which the law requires him to use in making entry at the port of arrival of the merchandise and the other in making entry at the port of destination. He is not required to furnish to the collector at the port of arrival a copy of this quadruplicate invoice to be used in making the permanent record which the collector is required to keep under section 2 of the act of June 10, 1880. A charge, therefore, for storage incurred by reason of the failure of the importer to furnish such a copy is not a legal charge against the importer.—T. D. 28156 (G. A. 6585).

Animals.—Transportation of caged, crated, or boxed animals allowed under the immediate-transportation act.—Dept. Order (T. D. 23135).

Immediate-Transportation Act of June 10, 1880, requires an entry, either for consumption or warehouse, at the port of destination in the United States. The shipment in transit through the United States under this act of merchandise shown by the manifest, invoice, or bill of lading to be intended for exportation will not be permitted. T. D. 21751 of November 13, 1899.—Dept. Order (T. D. 21800).

Ten-Day Limitation.—Sundays and holidays should be included in counting the 10 days allowed for.—Dept. Order (T. D. 9815).

Explosives.—Safety fuses not explosives, and are entitled to privilege of immediate transportation under act of June 10, 1880.—Dept. Order (T. D. 21219).

Detonators or blasting caps are held to be dangerously explosive and not entitled to bonding privilege.—Dept. Order (T. D. 21118).

Consolidation of I. T. Importations.—Consolidation of two or more importations in one immediate-transportation entry permissible where the bill of lading names only the forwarding consignee, but not where the ultimate consignee is named.—Dept. Order (T. D. 20111).

Entry Without Certified Invoice.—Entry of goods for immediate transportation, under act of June 10, 1880, may be made at the port of first arrival

on pro forma invoice, in absence of certified invoice, and without bond.—Dept. Order (T. D. 17136).

Consignments, Divided or Consolidated.—Entry of part of consignment for immediate transportation and part for consumption denied. Consolidation of several consignments in one invoice not allowable.—Dept. Order (T. D. 12174).

COPYRIGHT.

Law and Regulations Governing the Importation of Copyrighted Articles.—The following sections of the copyright law, approved March 4, 1909, effective July 1, 1909, together with the regulations made in pursuance thereof, are published for the information and guidance of customs officers and others concerned:

SEC. 15. That of the printed book or periodical specified in section five, subsections (a) and (b) of this act, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art; but they shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking ad interim protection under this act.

SEC. 30. That the importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any works copyrighted in the United States, is prohibited.

SEC. 31. That during the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or of any copies thereof (although authorized by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in section fifteen of this act, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of section fifteen of this act, shall be, and is hereby, prohibited: *Provided, however,* That, except as regards piratical copies, such prohibition shall not apply:

(a) To works in raised characters for the use of the blind;

(b) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization;

(c) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country;

(d) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say:

First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States;

Second. When imported by the authority or for the use of the United States;

Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious

purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States;

Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: *Provided*, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annul or limit the copyright protection secured by this act, and such unlawful use shall be deemed an infringement of copyright.

SEC. 32. That any and all articles prohibited importation by this act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however*, That all copies of authorized editions of copyright books imported in the mails or otherwise in violation of the provisions of this act may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve willful negligence or fraud.

SEC. 33. That the Secretary of the Treasury and the Postmaster General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this act, and may require notice to be given to the Treasury Department or Post Office Department, as the case may be, by copyright proprietors or injured parties, of the actual or contemplated importation of articles prohibited importation by this act, and which infringe the rights of such copyright proprietors or injured parties.

SEC. 18. That the notice of copyright required by section nine of this act shall consist either of the word "Copyright" or the abbreviation "Copr.," accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case of copies of maps, works of art, models or designs for works of art, reproductions of a work of art, drawings or plastic works of a scientific or technical character, photographs, prints and pictorial illustrations, the notice may consist of the letter C enclosed within a circle, thus ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided*, That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. Works in which copyright is subsisting when this act shall go into effect may be either in one of the forms prescribed herein or in one of those prescribed by the act of June 18, 1874.

The register of copyrights is required by this act to print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, which printed catalogues, as they are issued, will be distributed to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails.—Dept. Order (T. D. 31754) amended by T. D. 33258.

Copyrighted Books.—Rebinding abroad of books copyrighted in the United States does not operate to exclude such books from reimportation. Opinion of Attorney General, March 1, 1910.—Dept. Order (T. D. 30414).

Importation of Copyrighted Books.—Section 31 of the act of March 4, 1909, prohibits the importation of any book copyrighted in the United States during the existence of such copyright, regardless of the law under which the copyright was obtained, unless the book was produced in accordance with the manufacturing provisions of section 15 of the copyright act.—Dept. Order (T. D. 30136).

WAR RISK INSURANCE.

AN ACT To authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department.

Whereas the foreign commerce of the United States is now greatly impeded and endangered through the absence of adequate facilities for the insurance of American vessels and their cargoes against the risks of war; and

Whereas it is deemed necessary and expedient that the United States shall temporarily provide for the export shipping trade of the United States adequate facilities for the insurance of its commerce against the risks of war: Therefore .

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is established in the Treasury Department a bureau to be known as the Bureau of War Risk Insurance, the director of which shall be entitled to a salary at the rate of \$5,000 per annum.

SEC. 2. That the said Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States of American vessels, their freight and passage moneys, and cargoes shipped or to be shipped therein, against loss or damage by the risks of war, whenever it shall appear to the Secretary that American vessels, shippers, or importers in American vessels are unable in any trade to secure adequate war risk insurance on reasonable terms.

SEC. 3. That the Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, is hereby authorized to adopt and publish a form of war risk policy, and to fix reasonable rates of premium for the insurance of American vessels, their freight and passage moneys and cargoes against war risks, which rates shall be subject to such change, to each port and for each class, as the Secretary shall find may be required by the circumstances. The proceeds of the aforesaid premiums when received shall be covered into the Treasury of the United States.

SEC. 4. That the Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, shall have power to make any and all rules and regulations necessary for carrying out the purposes of this Act.

SEC. 5. That the Secretary of the Treasury is authorized to establish an advisory board, to consist of three members skilled in the practices of war risk insurance, for the purpose of assisting the Bureau of War Risk Insurance in fixing rates of premium and in adjustment of claims for losses, and generally in carrying out the purposes of this Act; the compensation of the members of said board to be determined by the Secretary of the Treasury, but not to exceed \$25 a day each, while actually employed. In the event of disagreement as to the claim for losses, or amount thereof, between the said bureau and the parties to such contract of insurance, an action on the claim may be brought against the United States in the District Court of the United States, sitting in admiralty, in the district in which the claimant or his agent may reside.

SEC. 6. That the Director of the Bureau of War Risks Insurance, upon the adjustment of any claim for losses in respect of which no action shall have been begun, shall, on approval of the Secretary of the Treasury, promptly pay such claim for losses to the party in interest; and the Secretary of the Treasury is directed to make provision for the speedy adjustment of claims for losses and also for the prompt notification of parties in interest of the decisions of the bureau on their claims.

SEC. 7. That for the purpose of paying losses accruing under the provisions of this Act there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of \$5,000,000.

SEC. 8. That there is hereby appropriated, for the purpose of defraying the expenses of the establishment and maintenance of the Bureau of War Risk Insurance, including the payment of salaries herein authorized and other personal services in the District of Columbia, out of any money in the Treasury of the United States not otherwise appropriated, the sum of \$100,000.

SEC. 9. That the President is authorized whenever, in his judgment, the necessity of further war insurance by the United States shall have ceased to exist, to suspend the operations of this Act in so far as it authorizes insurance by the United States against loss or damage by risks of war, which suspension shall be made, at any event, within two years after the passage of this Act, but shall

not affect any insurance outstanding at the time or any claims pending adjustment. For the purpose of the final adjustment of any such outstanding insurance or claims, the Bureau of War Risk Insurance may, in the discretion of the President, be continued in existence a further period not exceeding one year.

SEC. 10. That a detailed statement of all expenditures under this Act and of all receipts hereunder shall be submitted to Congress at the beginning of each regular session.

SEC. 11. That this Act shall take effect from and after its passage.

Approved, September 2, 1914.

PROHIBITED IMPORTATIONS NOT COVERED BY THE TARIFF ACT OF OCT. 3, 1913.

Coins, Counterfeit, penal laws of March 4, 1909, T. D. 32279.

Foreign Wild Animals or Birds, act of January 28, 1910, T. D. 30310.

Hay and Straw, section 2, act of February 2, 1903, T. D. 25324.

Insecticide Act of 1910, T. D. 31703 and T. D. 31847.

Oleomargarine, in packages of less than 10 pounds, act of August 2, 1886, T. D. 32237.

Insect Pests, act of March 3, 1905, T. D. 26172 and T. D. 34315.

Plant Quarantine Act of August 20, 1912, as amended by the act of March 4, 1913, T. D. 32935, T. D. 33071, T. D. 33205, T. D. 34625, and T. D. 33356, Circular No. 44, Department of Agriculture.

Pure Foods and Drugs Act of June 30, 1906.

Sealskins, Sealskin Garments, act of December 29, 1897, T. D. 18718, and T. D. 30682.

Seeds, act of August 24, 1912, T. D. 33175, and T. D. 33294.

Virus and Serums, Animals, act of March 4, 1913, T. D. 33575.

Virus and Serums, Man, act of July 1, 1902, T. D. 29823.

SUNDRY TOPICS.

ACTIONS FOR DUTIES, PRIOR TO ENACTMENT OF CUSTOMS ADMINISTRATIVE ACT.

Appraisal on Inadequate Examination.—In this case it appeared that the collector did not designate on the invoice the requisite number of sample bales for examination nor did the appraisers make proper examination of the merchandise, and the merchandise was, in fact, erroneously classified to the prejudice of the importer; but the appraiser made a certificate of appraisal in due form, and the collector made final liquidation of the duties on the basis of the appraiser's report, and the importer, having already paid the estimated duties, refused to pay the balance demanded. *Held*, that in a suit to recover such balance the importer could take advantage of none of these facts in his defense.—U. S. v. Chase, 25 Int. Rev. Rec., 161; 25 Fed. Cas., 410.

Delivery of Merchandise Withheld Because of Unpaid Duties on a Previous Importation.—The second proviso of section 62, act of 1799, makes the consignee of goods liable as owner for the duties thereon, but it does not prevent the consignee from passing, by sale or otherwise, a good title to the same goods, subject only to the payment of the duties thereon. If the consignee owes other bonds for duties, which are due and unpaid, he is entitled to no credit for duties at the customhouse, but the goods themselves may pass by sale and are liable only for the duties payable thereon and not for other duties due and unpaid.—Howland v. Harris, 4 Mason, 497; 12 Fed. Cas., 734.

Coöbligors.—Where two persons are bound jointly or jointly and severally in an obligation, the release of one of them will discharge the other.

Where a separate judgment has been rendered against one obligor on a joint and several obligation, and a scire facias is issued to revive the judgment, the defendant can not avail himself of a release given his coöbligor subsequent to the original judgment.

Where a joint judgment has been rendered against two defendants, a release of one of them subsequent to the judgment will discharge the other.

Where a release is given under the act of March 2, 1831 (4 Stat., 467), it has the same effect and is subject to the same legal consequences as an ordinary release from a creditor to a debtor.—U. S. v. Thompson, Gilp., 614; 28 Fed. Cas., 92.

Person—Corporation.—Under the act of 1797 a corporation may be included under the word person. The filing of a bill and the appointment of receivers, the purpose of a suit being merely to collect a debt, do not amount to such a transfer of the property of the debtor as is contemplated by that act.—Beaston v. The Farmers' Bank of Delaware, 12 Pet., 102.

Counterfeit money.—An attempted payment in counterfeit money as cash is in law no payment.—U. S. v. Morgan, 11 How., 154, 159.

District Attorney's Percentage.—The act of March 3, 1863, section 11, does not give district attorneys a per centum on the amount of a judgment or decree obtained in favor of the United States, but only upon the amount actually collected or realized thereon.

The words "collected" and "realized" used in said section are substantially synonymous, and money is not "realized" by the United States within the meaning of the same until the United States has received the same or the benefit of it.—*The Pacific, Deady*, 192; 18 Fed. Cas., 943.

Duties on Prize Goods.—Duties accrue as soon as the goods are voluntarily imported, and this as well as to prize goods as to any other, for the condemnation relates back to the time of importation.

The act of August 2, 1813 (3 Stat., 75), releasing one-third of the duties accruing on goods captured and brought into the United States by any private armed vessel of the United States, did not apply to the case of a vessel captured and brought in before the passage of the act but not condemned until after its passage.—*Prince v. U. S.*, 2 Gall., 204; 19 Fed. Cas., 1331.

Duties on Imported Merchandise a Personal Debt.—Duties are not simply a charge upon the merchandise to be collected only by means of the custody of the property, but are a personal debt against the importer, which may be collected by a civil action.—*U. S. v. George*, 6 Blatch., 406; 25 Fed. Cas., 1277.

The right of the Government to duties is not limited to the lien on the goods or the bond given for their payment. The revenue acts make the duties a personal debt or charge against the importer, which accrues immediately upon the arrival of the goods.—*U. S. v. Cobb*, 11 Fed. Rep., 76.

The duties upon all goods imported constitute a personal debt due to the United States from the importer (and the consignee for this purpose is treated as the owner and importer) independently of any lien on the goods and any bond given for the duties.—*Meredith v. U. S.*, 13 Pet., 486, 493.

When Duties on Imported Merchandise Accrue.—Duties upon goods imported do not accrue until their arrival at the port of entry.—*U. S. v. Vowell*, 5 Cranch., 368, 372.

Insolvency—Priority of Claims.—Where a partnership firm, being indebted for duties, makes an assignment of all their effects for the payment of their debts, for which the social fund is inadequate, this act is an act of insolvency, quoad the social fund, under the act which gives the United States preference over other creditors "in all cases of insolvency," and it seems that such an assignment amounts to an act of general insolvency and that the private property of the individual partners will also be subjected to the payment, in the first instance, of the debts due to the United States in the event of the inadequacy of the partnership fund.—*U. S. v. Shelton*, 1 Brock, 517; 27 Fed. Cas., 1056.

The United States is entitled to priority of payment out of the effects of its bankrupt insolvent debtor whether he be principal or surety or be solely, or only jointly with others, liable, and it is immaterial where the debt was contracted.

The United States was the creditor of Jay Cooke, McCulloch & Co., doing business in London and consisting of several persons, some of them residing there. The others resided in this country and with another partner constituted the firm of Jay Cooke & Co. The members of the latter firm were duly declared bankrupt, and a trustee was appointed under the forty-third section of the bankrupt act of March 2, 1867. *Held*, that the relation of the bankrupt members of the firm of Jay Cooke, McCulloch & Co. to the United States are the same as if they were severally liable to the United States, and that the United States is entitled to the payment of its debt out of their separate property in preference or priority to all other debts due by them, or either of them, or by the firm of Jay Cooke & Co.

The United States was under no obligation to prove its debt in the bankruptcy proceedings or pursue the partnership effects of Jay Cooke, McCulloch & Co., before filing this bill against the trustee, and the circuit court had original jurisdiction of the case thereby made, although the fund arose and the trustee was appointed under the bankrupt act.

The form of the indebtedness is immaterial. It may be by simple contract, specialty, judgment, decree, or otherwise by record. The debt may be legal or equitable and have been incurred in this country or abroad. A valid indebtedness is as effectual in one form as another. No discrimination is made by the statute. The debtors may be joint or several or principals and sureties.—*Lewis, Trustee, v U. S.*, 92 U. S., 618.

The United States are not entitled to preference upon the ground of the debtor having made an assignment for the benefit of creditors unless it is proved that the debtor has made an assignment of all his property.

Where the deed of assignment conveys only the property mentioned in the schedule annexed, and the schedule does not purport to contain all the property of the party who made it, the onus probandi is thrown on the United States to show that the assignment embraces all the property of the debtor.—*U. S. v. Howland*, 4 Wheat., 108.

A party who obtains from a disbursing officer public moneys without right thereto and with full knowledge that they are such becomes indebted to the United States within the meaning of the act of 1797, and in the event of his insolvency the United States is entitled to priority out of his assets.—*Bayne v. U. S.*, 93 U. S., 642.

Under the act of 1799 if the assignees of an insolvent debtor have notice of a claim of the United States they are not protected by an order of a court to distribute the funds to other creditors.—*Field v. U. S.*, 9, Pet., 182.

Section 5, act of March 3, 1797 (1 Stat., 512), giving a preference to the United States in cases of insolvency, is not confined to persons accountable for public moneys, but extends to debtors of the United States generally.

Congress has power to make the law giving preference to the United States.—*U. S. v. Fisher*, 2 Cranch, 358, 385.

Under the act of 1797 the United States is entitled to priority of payment, but not to a lien.

Under the act of March 3, 1797 (1 Stat., 512), and the act of March 2, 1799 (1 Stat., 627), section 65, the insolvency necessary to give the United States preference must be a legal insolvency and not a mere failure or inability to pay debts.

The assignment mentioned in the act of 1797 is of all the property of the debtor, leaving him in a state equivalent to technical insolvency.—*U. S. v. Hope*, 3 Cranch, 73, 88, 91.

A judgment gives to the judgment creditor a lien on the debtor's lands and a preference over all judgment creditors, but the law defeats the preference in favor of the United States in the cases specified in the act of 1799.

The word insolvency mentioned in the act of 1790 (1 Stat., 169) and repeated in the act of 1797, section 5 (1 Stat., 512, 515), and the act of 1799, section 65 (1 Stat., 627, 676), means a legal insolvency, which, whenever it occurs, the right of preference arises to the United States as well as in the other specified cases to which the acts of 1797 and 1799 have extended the cases of insolvency.

If before the right of preference has accrued to the United States the debtor has made a bona fide conveyance of his estate to a third person, or has mortgaged it to secure a debt, or if his property has been seized under an execution,

the property is divested out of the debtor and can not be made liable to the United States.—*Thelusson v. Smith*, 2 Wheat., 396.

In the distribution of a bankrupt's effects in this country the United States are entitled to a preference, although the debt was contracted by a foreigner in a foreign country and although the United States had proved their debt under a commission of bankruptcy and had voted for an assignee.—*Harrison v. Sterry*, 5 Cranch, 289.

Under the act of March 3, 1797 (1 Stat., 512), which is not controlled by the act of 1799, the priority of the United States in cases of a general assignment by their debtor comprehends a bond for duties executed before the assignment, but payable afterwards.—*U. S. v. The State Bank of North Carolina*, 6 Pet., 29.

One party being indebted to the United States and the firm being insolvent, having assigned all its property for the benefit of creditors, the United States have no right to priority of payment out of this fund under the act of 1799.—*U. S. v. Hack*, 8 Pet., 271.

Interest.

Suit was brought by the plaintiff to recover of the defendant the sum of \$1,529.50, with interest, as duties on the importation of certain cattle. The entry was reliquidated April 10, 1902, and the defendant duly notified thereof by the collector. The defendant refusing to pay the increased duties, suit was instituted for their recovery December 19, 1905. Upon the trial the court instructed the jury to return a verdict in favor of the Government for \$1,529.50, with interest thereon at the rate of 6 per cent per annum from April 10, 1902; and judgment was accordingly rendered for \$1,988.35. The defendant has filed a motion to reform the judgment on the ground that interest should not have been added to the amount of the reliquidated entry.

The judgment allowing interest will be permitted to stand. The motion to reform it is therefore overruled.—*U. S. v. Urmston (C. C.)*, T. D. 28327.

UNPAID DUTIES.—Duties due from an importer to the United States constitute a personal charge against him, for which an action of debt lies in favor of the United States; and where such debt exists unpaid the United States is entitled to interest on the amount due, as damages for illegal detention.

PERIOD OF COMPUTATION.—In cases of reliquidation of duties at a higher rate, interest on the amount due should be computed from the date of demand on the importer for payment of the increased duties.

RATE.—Interest due on unpaid duties accrues at the legal rate allowed by the State into which the importation is made.—*U. S. v. Mexican International Railroad Co. (C. C.)* T. D. 28326.

Liability of Importer for Duties.—Tea imported in 1816. Six days after importation goods sold. The purchaser gave bond for the duties; the goods were delivered to him, sold; the purchaser failed and the duties were not paid. Suit against importer. *Held*, that debt lies in favor of the United States against the importer for the duties due on goods imported. The right to duties accrues by the importation with intent to unlade, and immediately upon importation the duties become a personal charge and debt on the importer. A bond taken at the customhouse to secure the duties due by the importer is not an extinguishment of the debt so accruing, but merely collateral security for its payment.

No person but the owner or consignee, or in case of his sickness or absence his agent or factor, is entitled to enter and bond goods at the customhouse. A subpurchaser after importation has no such right. The collector has no right to receive the bond of any person as security for the payment of duties, except such person be legally entitled to enter them.

Debt lies against the importer for the duties on smuggled goods. So, where by mistake, or accident, or fraud, no bond is given to secure them. So, where short duties only have been paid.

An information of debt or an information in the nature of a bill of discovery and account is a proper remedy for the United States in such cases.—U. S. v. Lyman, 1 Mason, 482; 26 Fed. Cas., 1024.

If the articles were purchased by defendant after they had been imported and passed the customhouse without the payment of duties by others, he is not liable for the duties unless he connived at and is known to be privy to the importation.

The fact that dutiable goods were allowed by the customs officers to pass the customhouse without payment of duties will not relieve the importer from liability for the duties.

The burden of proof is on the Government to show that the defendant imported the articles without the payment of duties and also to show the quantity imported, and this must be done by a fair preponderance of evidence.

In an action to recover duties the Government is not entitled to interest on the unpaid duties. The amount of the recovery can not exceed the amount claimed in the petition.—U. S. v. Koblitz, 15 Fed. Rep., 900.

Lien for Duties.—Under section 62, act of 1799, the United States have no lien for duties incidentally due on customhouse bonds.

Goods imported and not entered are in custody of the laws of the United States and can not be attached upon State process. The United States having a lien on the goods for the payment of the duties accruing thereon and being entitled to a virtual custody of them from the time of their arrival in port until the duties are paid or secured, any attachment by a State officer is an interference with such lien and right of custody and, being repugnant to the laws of the United States, is void.—Harris v. Dennie, 3 Pet., 292, 305.

The United States have no specific lien on imported goods for the duties after having taken bond and security therefor and delivered the goods to the consignee.—U. S. v. Murdock, 2 Cranch (C. C.), 486; 27 Fed. Cas., 34.

A lien for duties can not be enforced by a libel in admiralty.—U. S. v. 350 Chests of Tea, 12 Wheat., 486.

Payment of Duties to Confederacy.—Payment of duties to the Confederate Government at places entirely in control of the insurrectionary power was not a discharge of the duties. The acknowledgment of belligerent rights did not make the rebel power a government, either de jure or de facto.—U. S. v. 17 Packages, etc., 2 Am. Law Rev., 785; 27 Fed. Cas., 1029.

Goods imported at Savannah May 7, 1861. The collector resigned January 31, 1861. The port of Savannah was in the paramount, forcible, military possession of the Confederate authorities and the duties were paid to the collector of customs for the Confederate States. *Held*, that this did not operate to suspend the laws as to relieve the goods from the payment of duties to the United States.—U. S. v. Stark (15 Int. Rev. Rec., 48; 11 Am. Law Reg. (N. S.), 37; 6 Am. Law Rev., 573), 27 Fed. Cas., 1293.

Payment of Duties in Gold and Silver Coin.—The judgment was originally for the amount due payable in gold coin for duties, and afterwards, during the term, amended by order of the court so as to make it "payable in gold and silver coin for duties." The objection is to the amendment and to the statement in the judgment that it is "payable in gold and silver coin for duties." The amendment during the term was clearly within the power of the court. The statement merely declared the legal effect of the judgment. The whole case shows that the judgment was for duties on imports, and nothing but gold and silver

coin has been made a legal tender for this description of indebtedness to the Government.—*Cheang-Kee v. U. S.*, 3 Wall., 320, 326.

Partners, Liability Of.—Every partner is civilly liable for violations of the revenue laws by his copartners, whether he knew of or consented to such violations or not.

Penal statutes not authorizing indictments are not within the rule of criminal law that a man is not punishable unless he has been guilty both of a criminal act or omission or unlawful intent.—*U. S. v. Thomasson*, 4 Biss., 99; 28 Fed. Cas., 80.

Priority of Claims.—The revenue laws give a preference over other creditors in several cases, but must not be so construed as to destroy a prior legal claim.—*U. S. v. Sheriff of Charleston, Bee*, 196; 27 Fed. Cas., 1065.

Pure-Food Law—Samples.—Samples of imported merchandise consumed or destroyed by the Department of Agriculture in making the inspection and analysis authorized by the so-called pure-food law, as contained in a paragraph of the appropriation act of March 3, 1903, are dutiable, and the collector is required to levy and collect duty thereon the same as on the remainder of the importation.—*T. D. 26839 (G. A. 6197)*.

Suit for Duties.—Recovery for duties and double values may be had in the same case.—*Stockwell v. U. S.*, 3 Cliff., 284; 12 Int. Rev. Rec., 88; 23 Fed. Cas., 116.

The decision of the collector is final and conclusive against all persons interested, upon the question necessarily decided, and in a suit for duties it is not necessary for the United States to show that the collector adopted the proper rate and amount of duties nor can the defendant impeach the liquidation by showing irregularities in the mode of appraisement.—*Watt v. U. S.*, 15 Blatch., 29; 29 Fed. Cas., 441.

The collector's books in the handwriting of a deceased clerk are evidence for the United States.

The United States may maintain indebitatus assumpsit for duties not bonded.—*U. S. v. Howland*, 2 Cranch (C. C.), 508; 26 Fed. Cas., 396.

A suit can not be maintained in admiralty in rem to enforce the payment of duties.—*The Waterloo*, Blatch. & H., 114; 29 Fed. Cas., 399.

Tender of Duties.—Certain importers of teas stated to a deputy collector that they would make a tender of a certain amount of duties due on same, and he told them they need not do so, as he would acknowledge the tender. *Held* no tender, especially as none was pleaded.

A deputy collector has no authority to make such a waiver.—*U. S. v. Nash*, 4 Cliff., 107; 27 Fed. Cas., 75.

Unloading for Transshipment.—Opium shipped on board a steamship at Honolulu for Panama via San Francisco, intended to be transferred on landing to another steamer at San Francisco running to Panama in connection with the steamship from Honolulu and entered on the manifest and bills of lading and reported to the collector as being in transit for Panama, the owner having applied to the collector for a permit to make the transshipment and offered to give the security prescribed by statute and a permit having been refused, was held not to be liable for duties and a seizure for nonpayment of duties held to be illegal.—*McLean v. Hager*, 31 Fed. Rep., 602.

ACTIONS TO RECOVER EXCESS OF DUTIES PAID.

DECISIONS PRIOR TO THE ENACTMENT OF CUSTOMS ADMINISTRATIVE ACT.

Action to Recover Duties on Short Shipment.—In an action to recover duties paid, on the ground that there was a shortage in the importation, the only evidence consisted of the returns to the collector of the subordinate customs official, which were conflicting on the question of the existence of a shortage, and an ex parte affidavit of the master, indorsed on the manifest, that certain packages were "short shipped." At the close of the evidence each party requested the court to direct a verdict, and the defendant's motion was granted. *Held*, no error.—*Merwin v. Magone* (C. C. A.), 70 Fed. Rep., 776.

Amendment to Bill of Particulars.—Two suits were pending the same parties for the recovery of duties illegally exacted. The first suit was brought within 90 days after the decision of the Secretary on the appeal. The second suit was not commenced until more than a year after the decision of the Secretary. The importer did not know at the time of the commencement of the first suit that any decision had been made by the Secretary on the appeal covering the entries in the second suit. A bill of particulars in each suit was served within the statutory time. The plaintiff moved to amend the bill of particulars in the first suit by adding or transferring thereto 11 entries contained in the bill of particulars in the second. *Held*, that amendments will not be allowed which introduce a new cause in this case, where the granting of the amendment would be to take the entries sued on in the second suit out of the limitation.—*Dieckerhoff v. Robertson*, 29 Fed. Rep., 781.

The bill of particulars may be amended by increasing the amount of the duties claimed in case of reasonable excuse for a bona fide mistake, but the specific cause of error or mistake should be shown, and why the original was not made in proper form.—*Dieckerhoff v. Robertson*, 32 Fed. Rep., 73.

Action begun in January, 1866. Bill of particulars served in February, 1867, an amended bill in December of the same year, and a further amended bill November 3, 1882. The earliest entry was of date April 29, 1861. In the latter part of 1887 the plaintiff moved to further amend. Neither the merchandise, the vessel, nor the dates of the invoice, entry, payment, or protest were, as to the items forming the subject of the motion, stated in the bill. In fact, the dates as proposed were January, 1861. *Held*, that under R. S. 954, providing for amendments for defects of form, the court has power to allow amendments of the bill of particulars after 30 days, the discretion was to be exercised only in extreme cases, and the plaintiff was not within the rule.

The original bill of particulars had the following phrase at the bottom: "E. & O. E. Above intended to include all entries upon which duties and fees were paid by plaintiff to defendant between April 8, 1861, and September 8, 1864." *Held*, that the sufficiency of the notice was to be determined on the trial and not on motion to amend the bill of particulars.

The act of February 18, 1867, section 1, provides that all suits or prosecutions that have been or shall be commenced under any prior act of Congress repealed or supplied by the act of July 18, 1866, for acts committed previous to that date, shall be tried and disposed of as if the act of July 18 had not been passed. Section 26 of that act, requiring service of a bill of particulars within 30 days after notice of defendant's appearance, reenacted in R. S. 3012. *Held*, that the question of the repeal of this section by the act of February 18, 1867, was not before the court on a motion to amend the bill of particulars.—*Rickards v. Barney*, 32 Fed. Rep., 581.

A motion to amend the bill of particulars by increasing the amount claimed therein for excess of duty will be denied where it appears that the mistake in making up the original statement was entirely that of the plaintiff's agent or broker and was in no way induced by any misinformation furnished at the customhouse.—*Dieckerhoff v. Robertson*, 32 Fed. Rep., 758.

Authority of Collector.—A collector can not bind the United States by any acts beyond or contrary to the authority given him by the law.

The receipt of the collector, acknowledging payment of duties, is prima facie evidence, but not conclusive, of the fact of payment.—*Johnson v. U. S.*, 5 Mason, 425; 13 Fed. Cas., 868.

Bill of Particulars Not in Time and Defective.—Under R. S. 3012, construed in connection with R. S. 954, this court has power in a suit to recover duties to allow a bill of particulars to be served after the expiration of 30 days after notice of the appearance of the defendant and to allow a defective bill of particulars to be amended.—*Pott v. Arthur*, 15 Blatchf., 314; 19 Fed. Cas., 1131.

Burden of Proof.—In an action against a collector of customs to recover the amount of duties alleged to have been exacted in violation of law, the burden of proof is upon the plaintiff.—*Arthur v. Unkart*, 96 U. S., 118.

Contract Authorizing Suit for Recovery of Duties.—Contract whereby plaintiffs and others authorized the institution of suits to recover alleged illegal customs duties and fees construed, and held that the substitution of attorneys through whom some of such suits were settled was valid, that plaintiffs were bound by the action of said attorneys, and that the cases so settled should not be revived against the executors of the collector.—*Dale v. Redfield*, 22 Fed. Rep., 506.

Decision of Secretary on Appeal—Ninety-Day Limitation.—An importer suing to recover duties, in order to avoid the bar resulting from his failure to bring the action within 90 days after the decision of his appeal to the Secretary, alleged that such decision was void because made, not by the Secretary, but by the Assistant Secretary, acting in his official capacity as assistant. *Held*, that the assistant secretaries would have authority to decide such appeals if that duty were assigned to them by the Secretary, or in case of his absence or sickness (R. S. 161, 177, 179, 236, 245), and it must be presumed, in the absence of a contrary showing, that the appeal was lawfully decided.

A decision by the Secretary that he will not entertain an appeal from the decision of the collector because the protest was not filed in time is a decision "on the appeal" within the meaning of this section.

A suit against a collector is practically a suit against the United States; and as the Government is not bound by an estoppel, the fact that the collector did not notify the importer of an adverse decision by the Secretary does not prevent the collector from setting up as a defense that the suit was not brought within 90 days from the decision of the Secretary.

An estoppel in pais operates only in favor of the person actually misled, and an assignee of a claim for duties paid can not rely upon an estoppel alleged to arise from acts of the collector which misled the assignor.—*John Shillito Co. v. McClung*, 51 Fed. Rep., 868; 45 Fed. Rep., 778 affirmed.

It is not the duty of the collector to inform the importer of the disposition of the appeal by the Secretary, and the fact that the collector by his silence leads the importer to suppose that the appeal has not been acted on,

when in fact it has been decided, does not estop the collector from setting up the 90-day limitation to a suit to recover the excess duties.

Where the answer alleges that the appeal was decided more than 90 days before suit, a reply setting up that the collector is estopped from setting up the limitation because of his silence and failure to inform plaintiff that the appeal had been decided is not a departure from the petition, which alleged that the appeal had not been decided before the suit was brought.

Matters of estoppel in pais may be set up in actions at law as well as in suits in equity.—*John Shillito Co. v. McClung* (C. C.), 45 Fed. Rep., 778.

Whether under the act of March 3, 1857 (11 Stat., 192), a suit can be brought when the Secretary unreasonably neglects to make and communicate a decision on an appeal, *quære*.

Under said act an appeal was taken from the decision of the collector as to the rate and amount of duties. On the trial of a suit to recover the duties the importer gave evidence tending to show that he was justified in considering his appeal as having been decided against him, but the court directed a verdict for the defendant. *Held*, that the question as to whether there was evidence of a decision by the Secretary upon the appeal ought to have been submitted to the jury.

Where in June, 1863, the same precise question had been decided by the Secretary, on appeal, against the importer, and the Secretary had published a circular to that effect, and in September and October, 1863, the importer presented the same question to the Secretary on appeal, and up to January, 1866, he had made no response, the importer was justified in considering his appeal as having been decided against him.

Under section 5, act of March 3, 1857 (11 Stat., 192), an appeal is not a condition precedent to a right of action against a collector to recover back duties illegally exacted by him where the question is as to the rate or amount of duty, it being conceded that some duty is payable, but the statute applies only to cases where the question is whether the goods are liable to any duty or are exempt.

A collector who demands and receives illegal duties which are paid to him under protest is liable in an action of assumpsit for the amounts thus collected by him.—*Schneider v. Barney*, 13 Blatchf., 37; 21 Fed. Cas., 702.

The time fixed by the statute for commencing an action against a collector to recover excess of duties illegally exacted is within 90 days after the adverse decision of the Secretary on appeal; but if the Secretary fail to render a decision within 90 days the importer has an option either to begin suit, treating the delay as a denial, or to await the decision and sue within 90 days thereafter.

The common-law right of action against the collector to recover back duties illegally exacted is taken away by statute and a remedy given based on statutory liability which is exclusive.—*Arnson v. Murphy*, 109 U. S., 238.

Delivery Without Examination—Goods Not as Entered.—Where the plaintiff through a clerk entered goods at the customhouse as cotton goods and made the usual oath that the entry contained a just and true account of the goods, and upon the faith thereof they were delivered to him without examination, and nine months after the duties were paid the plaintiff gave notice to the collector that the goods were silk hose not subject to duty, *Held*, that the mistake of fact, if any, having arisen from the culpable negligence of the plaintiff, whereby the Government was no longer in a condition to ascertain by examination the character of the goods, the money could not be recovered.—*Bend v. Hoyt*, 13 Pet., 263.

Duties Illegally Exacted—Suit Not in Time.—The assignor of the defendants in error employed the plaintiffs in error as their agents to enter at the customhouse in New York importations of sugar and after protest to commence suits to recover an excess of duty, and the plaintiffs in error undertook to perform those services; and, it being settled in actions brought by other persons under similar circumstances and on like importations that such duties were illegally exacted, and the plaintiffs in error having failed to commence suits within the period limited by law to recover such as were illegally exacted from the assignor of the defendant in error. *Held*, that the judgment of the court below for their recovery must be affirmed.—*Bowerman v. Rogers*, 125 U. S., 585.

Evidence Irrelevant and Misleading.—In an action tried in 1890 to recover duties paid in 1861 on an importation of bareges, grenadines, maretz, and merinos, the plaintiff introduced no samples of imported goods nor any evidence as to their loss or destruction, and gave no reason why they were not preserved and produced. He showed to one of his witnesses samples of grenadines, bareges, etc., but without connecting them in any way with the importations, and questioned the witness concerning them. *Held*, that their admission tended to mislead the jury and was error, and that such evidence came within the rule that "a fact which renders the existence or nonexistence of any fact in issue probable by reason of its general resemblance thereto, and not by reason of its being connected therewith, it is deemed not to be relevant to such fact."—*Barney v. Rickard*, 157 U. S., 352.

Excessive Award by Jury.—Where the jury by mistake in calculating the amount of duty illegally exacted render a verdict for too large an amount, such verdict may be sustained on remitting the excess and a new trial refused.—*Windmuller v. Robertson*, 23 Fed. Rep., 652.

Extension of Six Years' Limitation—Absence of Collector.—Suit against the collector at New York to recover duties. Between the time the cause of action accrued and the date of bringing the suit the collector was absent from New York for several periods, amounting to more than 12 months. *Held*, that the 12 months is to be added to the 6 years' limitation prescribed by the New York Code of Civil Procedure, sections 91 and 100.

The liquidation upon each entry is the foundation of an entire cause of action, and the importer can not split it up and make it the subject of different suits.—*Hennequin v. Barney*, 24 Fed. Rep., 580.

Failure to Serve Bill of Particulars Within 30 Days.—Where plaintiff fails to serve a bill of particulars within 30 days after defendant's appearance, as required by Revised Statutes 3012, judgment non-pros must be entered against him.

The court has no power to grant an application to serve a bill of particulars nunc pro tunc after the expiration of 30 days from defendant's appearance.

Revised Statutes 3012 is mandatory, not directory, in its provisions. *Pott v. Arthur* (15 Blatchf., 314), modified and distinguished.—*Castner v. Magone*, *Conant v. Same*, *Avis v. Same*, 32 Fed. Rep., 578.

Findings of Fact.—Where there is a general finding in favor of the plaintiff on the issues of fact raised by the pleadings, the facts must be taken to be as alleged by plaintiff in his pleadings.—*Badger v. Cusimano*, 130 U. S., 39.

Findings of fact which do not show what the collector charged the plaintiff nor sufficiently describe the articles imported, and a record which fails to show under what provisions of a tariff act the parties claimed, respectively, leaves this court unable to direct judgment for either party.

In such a case the opinion of the court below can not be resorted to to help the findings out.—*Saltonstall v. Bartwell*, 150 U. S., 417.

Findings of Fact—Review.—The Supreme Court accepts the findings of ultimate fact made by the Court of Claims and can not review them.—*Collier v. U. S.*, 173 U. S., 79, 80.

Instructions to Jury.—Certain articles were imported by A from Liverpool November 14, 1871, upon which the collector collected a duty of 6 cents a pound, imposed by section 5, act of July 14, 1862, upon "argols or crude tartar." A claimed that they were argols crude and as such were, by section 22, act of July 14, 1870, free. A paid the duty under protest and brought suit to recover. The court instructed the jury that it was for them to determine from the evidence whether the argols in question were "argols crude" then known as such to commerce or to science or whether they were argols that were more or less refined. *Held*, that the instruction was proper and covered the entire ground of controversy. The jury found the duty properly assessed.—*Recknagel v. Murphy*, 102 U. S., 197.

In 1872 "jute rejections" were imported from India and duty of 10 per cent imposed under section 24, act of March 2, 1861, as a nonenumerated manufactured article, and \$5 per ton under section 11, act of July 14, 1862, as a vegetable substance not enumerated. Duty paid under protest and suit to recover the specific duty of \$5 per ton. The jury was instructed that it was for them to find "whether or not jute rejections were of a class of nonenumerated vegetable substances similar to the enumerated articles in section 11, act of 1862. If they were, then the duty was properly assessed; if not, then their verdict must be for the plaintiff." Verdict for defendant. *Held*, that the instruction was proper.—*Wills v. Russel*, 100 U. S., 621.

White linen torchon laces and insertings were imported in 1878. The importer claimed that they were dutiable at 30 per cent under Revised Statutes 2504, Schedule C. He paid under protest 40 per cent, the duty prescribed on manufactures of flax, and brought suit against the collector. The court instructed the jury to determine from the evidence whether the goods were "thread lace" such as the schedule describes, and, if they were not, to find for the defendant. Verdict for importer. *Held*, that the instruction was correct.—*Smith v. Field*, 105 U. S., 52.

Insufficient Bill of Particulars.—The bill of particulars did not contain the name of the importer or importers, the place from which the merchandise was imported, the date of the invoice, and the date of the payment of the duties claimed to have been exacted in excess. *Held*, insufficient and defective and a judgment of non-pros granted.

Where the bill of particulars does not contain all the items required by R. S. 3012, the court is without power to grant leave to amend nunc pro tunc.—*Sherman v. Hedden*, 32 Fed. Rep., 756.

Interest.—The liability assumed by the Government does not include the payment of interest upon judgments recovered against collectors of customs.

The allowance of interest as damages on a writ of error, under R. S. 1010 and under rule 23, Supreme Court, and the form of mandate affirming with interest a judgment where a collector is plaintiff in error, does not affect the question. They belong solely to putting the judgment in shape.

There is no personal liability on the part of the collector, after the making of a certificate of probable cause, to pay the interest on judgments obtained against him. Under R. S. 989 he is not liable for interest if the Government is not.

A suit against a collector is a private suit, and there is no claim against the Government until a certificate of probable cause has been obtained from the court. Then the Government assumes a certain liability.—*White v. Arthur*, 10 Fed. Rep., 80.

When a collector of customs brings a writ of error to review a judgment recovered against him for moneys exacted by and paid to him on entries, this court will, if it affirms the judgment, allow interest on it under rule 23.

In such a case the "final judgment," the amount whereof is payable under R. S. 989, is that rendered by the court below pursuant to the mandate of this court.—*Schell v. Cochran*, 107 U. S., 617.

An importer who has brought suit against a collector to recover duties can not recover interest by way of damages if he has been guilty of laches in unreasonably delaying the prosecution of the suit after it has been brought.

In this case, however, although judgment had been delayed 20 years, after a special verdict interest was allowed.—*Bartels v. Redfield*, 27 Fed. Rep., 286.

The allowance of interest from the time of rendering of the verdict till the judgment was proper, this court having adopted the practice of the State court.—*Fowler v. Redfield*, 9 Fed. Cas., 620.

Suit to recover duties commenced in 1863 and tried in 1886. If the jury find that the delay was the fault of the plaintiffs, they are not entitled to interest. If they find that for a part of the time the plaintiffs are to blame, they are not entitled to interest for such time. Verdict for plaintiffs without interest.—*Stewart v. Schell*, 31 Fed. Rep., 65.

Judgment on Bond.—Under the act of July 11, 1798 (1 Stat., 594), a judgment by default on a collector's bond, the writ not having been served 14 days before the return thereof, is erroneous.—*Dobynes & Morton v. U. S.*, 3 Cranch, 241.

Judgments Against Collector—Claims Against the United States.—Judgments against collectors for excess of duties are not "claims against the United States" within the meaning of R. S. 3477.

Even if such judgments are claims against the United States, R. S. 3477 does not affect assignments to the real owner of the judgments, made by an agent in whose name they were rendered, by order of a court, since such statute applies only to voluntary assignments.

Where an importer obtains judgments in the name of his agent against a collector for an excess of duties collected on goods imported in the name of such agent, and the agent refuses to assign the judgments to his principal, the latter has no adequate remedy at law, and a court of equity has jurisdiction to compel such assignment.—*Burke v. Davis* (C. C.), 63 Fed. Rep., 456.

Merchandise Purchased in Bond.—Where merchandise is withdrawn on the written authorization of the importer by third parties, who pay the duties thereon, in an action by the importer to recover the duties illegally exacted the duties thus paid may be recovered upon the assumption that they were paid in behalf of the importer.—*Simpson v. Schell*, 14 Fed. Rep., 286.

Merchandise Purchased in Bond Pending Appeal.—The purchaser of an imported article in bond pending an appeal from the assessment of duties upon it, which is subsequently overruled, can, on paying the duties as assessed, maintain an action in his own name against the collector to recover an excess in the payment exacted.—*Seeberger v. Castro*, 153 U. S., 32.

A person who purchases merchandise from an importer while in bond and pending an appeal may sue for the excess of duties claimed to have been paid.—*Castro v. Seeberger* (C. C.), 40 Fed. Rep., 531.

Ninety-day Limitation—Commencement of Suit.—Action to recover duties alleged to have been illegally exacted. The question was whether the suit commenced in the Superior Court of the City of New York was begun in time. The decision of the Secretary was made May 28, 1872, and the 90 days expired on August 26. Summons dated August 21 and effort made to serve it without the intervention of the sheriff, but failing in this, the summons was on August 26 delivered to the sheriff of the county in which the sheriff resided and served on August 27. When a suit is brought in a State court the laws of that State will control in the interpretation of the provisions of a Federal statute of limitations as to what is the commencement of a suit. Under the New York Code of Civil Procedure, section 99, the suit was commenced when the summons was delivered to the sheriff with the intent that it be served.—*Goldenberg v. Murphy*, 108 U. S., 162.

Objection to Merchant Appraiser.—In any action to recover duties claimed to have been illegally exacted because the merchant appraiser in the reappraisement was not familiar with the character and value of the goods, as required by Revised Statutes 2930, the importer may, if the objection was taken in his protest, show by the testimony of the appraiser himself that the provisions of said section were not complied with. Sustaining the circuit court.—*Magone v. Origet* (C. C. A.), 70 Fed. Rep., 778.

Payment of Amount of Judgment by Treasury Department.—This certificate may be granted by a different judge from the one before whom the judgment was rendered.

It having been the practice of the defendants in cases against collectors for excess of duties not to ask for a certificate until the judgment was about to be paid by the Treasury Department, no laches or delay can be alleged against the defendant for not applying for a certificate before the issuing of an execution.

Where a collector has exacted money in the performance of his official duty, under the directions of the Secretary of the Treasury, it is the duty of the court to grant a certificate of probable cause, leaving the consequences to take care of themselves.

A judgment having been rendered against a collector of customs in a "charges and commissions" case, and the judgment not having been paid by the Treasury Department, the plaintiff issued an execution against the defendant. The defendant applied for a certificate of probable cause. *Held*, that the application must be granted.—*Cox v. Barney*, 14 Blatch., 289; 6 Fed. Cas., 675.

Payment to Obtain Possession of Goods.—A voluntary payment made to a collector under a mistake of law can not be recovered back; but if the party paying declare that he makes the payment to get possession of his goods, that he intends to sue to recover it back, and that the collector must not pay it over, the collector is liable.—*Elliot v. Swartout*, 10 Pet., 137, 153, 158.

Petition in Action for Recovery of Duties—Requirements.—Actions to recover duties paid under protest are purely statutory.

Where the petition shows on its face that the plaintiff has taken all the steps antecedent to a suit prescribed by Revised Statutes 2931 and 3011, and furthermore contains a statement of all those matters required to be contained in a bill of particulars under Revised Statutes 3012, it is not demurrable on the ground that it does not state a good cause of action.

The facts required to be stated in the bill of particulars need not be stated in the petition any more fully than they are required to be stated in the bill.

Where the petition stated that the defendant on a given day required the plaintiff, as importer, to pay a given sum in excess of the lawful duties on

certain described goods which were invoiced on a certain day, shipped from a certain place on a certain steamer, and were entered in the customhouse on a given date, *Held*, that it was not demurrable, on the ground that it merely stated legal conclusions and did not state any facts in an issuable form.—*Wedemeyer v. Lancaser*, 30 Fed. Rep., 670.

Petition in Action for Recovery of Duties.—Sufficiency.—Where the complaint states that the plaintiff paid under protest, and a bill of particulars is also served according to R. S. 3012, which shows that the protest and appeal were in writing and in time, *Held* sufficient under the first clause of R. S. 3011.

In an action to recover alleged excess of duties exacted by the collector, *Held* that an averment that a certain sum of money in excess of the legal duties was exacted of the plaintiff and paid by him under compulsion in order to obtain the goods was an averment of fact, sufficient under the code (New York) as at common law, and not a statement of a conclusion of law merely; so, also, of averments that the legal duty on certain goods was a certain specific sum and that a certain other specific sum was exacted by the collector.

The protest and appeal and bill of particulars required by R. S. 2931, 3012, ordinarily furnish all the necessary information as to the question actually to be tried.—*Muser v. Robertson*, 17 Fed. Rep., 500.

Premature Commencement of Suit.—A suit against a collector was brought in time as to two importations, but prematurely brought as to a third importation, in that 90 days since the appeal had not elapsed and no decision of the Secretary made, and as to a fourth importation in that no such decision, or an appeal, or protest (also required) had been made. Subsequently to the commencement of this suit such protest, appeal, and decision were made. Thereafter complaint and bill of particulars and answer were served. The collector refunded the duties sued for as to the first two importations, but refused to refund as to the last two, solely on the ground that as to them the suit was prematurely brought. *Held*, that a recovery was authorized by R. S. 2931, 3011, and 3012 when construed together.—*Moller v. Merritt*, 29 Fed. Rep., 678.

Production of Bill of Particulars.—In an action against a collector he obtained an order of court requiring the plaintiffs within a specified time to serve a bill of particulars of their claim, and that in default of such service the defendant should have judgment of non-pros against the plaintiffs, provided that, on the proof by them of certain service, on their compliance with the conditions then prescribed by the order they should not be required to furnish such bill. More than three years having elapsed and no bill meanwhile having been served, the defendant notified a second motion for such bill, and, in default of the service thereof within five days, for judgment of non-pros. The plaintiffs noticed a countermotion for the production of certain papers, under R. S. 724, and, on failure of their production, that this action be continued and not placed on the day calendar. Upon the argument the plaintiffs produced affidavits which they claimed showed the existence of the circumstances mentioned and a substantial compliance by them with the conditions prescribed by the order for the nonservice of the bill. The court held that the plaintiffs had not shown the existence of these circumstances, and therefore had not complied with these conditions, but, as they might have omitted through some excusable negligence to state in their affidavits the facts showing the existence of such circumstances, extended the plaintiffs' time to comply with the terms of the order for the bill five days

from the date of the service of an order granting this extension, but ordered that in default of such service, and on proof thereof, the defendant should have judgment of non-pros.—*Schmieder v. Barney*, 32 Fed. Rep., 657.

Purchaser of Claims Can Not Sue to Recover.—The action under R. S. 3011 as amended by the act of February 27, 1877 (19 Stat., 240, 247), authorizing suits to be brought to recover an excess of duties paid, can not be maintained by a stranger suing solely in virtue of the purchase of claims from those who did not see fit to prosecute them themselves. *Hager v. Swayne*, 140 U. S., 242.

Recovery of Duties Paid After Delivery.—Duties paid after the delivery of goods to the importer can not be recovered.—*Rossman v. Hedden*, 37 Fed. Rep., 99.

Recovery of Duties Paid on Nondutiable Charges.—In 1864 a verdict was rendered, by consent of counsel, in an action to recover duties alleged to have been illegally exacted, "for the plaintiffs, for excess of duty, with interest thereon, illegally exacted from the plaintiffs, and paid under protest, and not barred by the statute of limitations." Among the charges which were specified as recoverable were "charges on merchandise imported at New York for the transportation of the goods from the interior of the country by railroad or water carriage, incurred prior to the time of exportation." A reference was made to ascertain the amount due, and defendant excepted to the report. *Held*, (1) that the verdict precluded the defendant from denying that the plaintiffs were entitled to recover the excess of duties illegally exacted by and paid under protest to him, and that when plaintiffs showed that they had paid excessive duties under protest they were entitled to recover the same; (2) that the verdict was to be treated as a stipulation and subject to modification, and an order of court refusing to allow the defendant to set up the statute of limitations precluded him from making such defense at this stage of the case; (3) that, construing the verdict with the aid of the protest, it was never intended to authorize the recovery of duties paid for "frais jusqu'à bord"; (4) that, as the verdict did not liquidate the damages recoverable by the plaintiffs, there was no rest at the date of the verdict, but the interest ran continuously from the date of payment of the excessive duties until the date of liquidation by the referee; (5) that a misjoinder of parties could not be availed of by the defendant under plea of nonassumpsit, though possibly under this very peculiar verdict it might have been taken advantage of by a plea of misjoinder.—*Bartels v. Redfield*, 16 Fed. Rep., 336.

Rights of Importer in Reappraisement Proceedings.—In a suit to recover back duties paid under protest, where the only question tried was whether in reappraisement proceedings the importer was denied rights secured to him by law. *Held*, that a motion to direct a verdict for the defendant was properly denied, the court having ruled in accordance with the decision in *Auffmordt v. Hedden* (137 U. S., 310) and having instructed the jury fully and properly, and there being no exception to the charge, and a question proper for the jury.—*Hedden v. Iselin*, 142 U. S., 676.

Right to Sue.—Prior acts giving persons the right to sue without similar conditions did not confer on them any such vested right so to sue, in regard to transactions which accrued before the passage of the act of 1896, as that they still could sue, irrespective of the conditions, after the time when this act by its terms was to take effect.—*The Collector v. Hubbard*, 12 Wall., 1, 15.

The act of February 26, 1845, restored the common-law right of a suit against a collector to recover duties illegally exacted, which had been taken away by the act of March 3, 1839 (5 Stat., 348), section 2, and under it an execution

can issue against a defendant to recover from him personally the amount of a judgment obtained against him for duties illegally exacted.—*Knoedler v. Schell*, 4 Blatch., 484; 20 How. Prac., 216; 14 Fed. Cas., 780.

Samples.—In an action to recover duties, which action is based on a reliquidation, the fact that the appraiser who made the examination can not at the trial identify particular samples as belonging to particular invoices is immaterial when the goods consist of lenses for optical instruments which are exactly alike in all invoices and the testimony further shows that at the time of making the reexamination the appraiser had each sample marked as from the particular invoice.—*U. S. v. Fox* (D. C.), 53 Fed. Rep., 531.

Suit Against Collector Whose Term Had Expired.—Regarding a suit to recover duties as a suit against the defendant collector, he can not be prejudiced by anything said or done by the Government or its officials without his concurrence, especially after he ceases to be collector.

The Government can not be prejudiced by an opinion or promise made or expressed by the defendant, especially when at the time he said what he said he was no longer in office.—*Andrae v. Redfield*, 12 Blatch., 407; 1 Fed. Cas., 856.

Testimony of Expert.—An expert called to testify as to the processes of manufacture, quality, and similarity of certain fabrics from an inspection of them may be shown other samples of like fabrics by the adverse party and asked his opinion as to the kind of goods they are and how they were manufactured, and his opinion may be contradicted by such party to impair his testimony as an expert.—*Greenleaf v. Goodrich*, 1 Hask., 586; 21 Int. Rev. Rec., 324; 10 Fed. Cas., 1168.

Testimony of Customs Official.—An illegal exaction can not be proved by the testimony of a customs official that he adjusted the accounts of overpaid duties from the papers on file together with a statement of the same, where he produces but a part of the entries and no proof of the payment of such alleged excessive charges is made by the plaintiff.

In such a case proof by a customs official of the practice of the Government in respect to appeals to the Secretary and the refunding of duties is admissible in evidence as bearing on the construction of the law.

In an action to recover excess of duties, where the claim embraces items of account too numerous for the consideration of the court and jury, a reference will be made to an officer of the court to adjust the same.—*Benkard v. Schell*, 5 Int. Rev. Rec., 3; 3 Fed. Cas., 192.

Testimony—Competency of Witness.—In an action to recover duties illegally exacted, where the issue was whether certain articles were within the commercial designation "hemstitched handkerchiefs," defendant offered a witness who for many years had been engaged in the manufacture of cotton handkerchiefs and articles similar to those in question, but who had never bought or sold imported handkerchiefs or been present when they were bought or sold. *Held*, that he was, nevertheless, competent to testify by what name the imported articles in question were known at the time the act was passed, for his want of personal experience in handling imported goods only affects the weight of his testimony. Reversing the Circuit Court.—*Erhardt v. Ballin* (C. C. A.), 55 Fed. Rep. 968.

Verdict for Plaintiffs Not Proven to be Firm Which Paid the Duties.—Where the verdict is that by the consent of counsel the jury find for the plaintiff "for the amount, with interest, of the excess of duties paid, under protest, on more than 2 per cent commission on all importations specified in the bill of particulars in this case, from the Continent of Europe, except Paris,

the amount to be adjudged by the clerk of this court or his deputy," and the clerk reports that according to his adjustment the plaintiffs are entitled to judgment for a sum named, the report can not be excepted to on the ground that the duties are shown to have been paid by a certain firm and that the plaintiffs did not prove before the referee that they composed that firm when the duties were paid or that they alone paid the duties.

Even if such objection be not one which ought to have been taken by plea in abatement, as being an objection that some party who ought to have been joined as plaintiff in the suit was not joined, the verdict cures any defect in that regard.

Such verdict must be considered as being also an order of reference and confines the action and duty of the referee to an arithmetical adjustment.

Under such verdict the plaintiff is not required to prove before the referee that the duties were paid under protest.—*Greenleaf v. Schell*, 6 Blatch., 225; 10 Fed. Rep., 1173.

Voluntary refund—Discontinuance of Suit.—A voluntary refunding to an importer, whose protest was in the alternative, of the excess of duty collected according to one of his claims and the discontinuance of a suit brought for the collection of such excess, in the absence of any release or evidence of accord and satisfaction, will not preclude him from maintaining another suit to recover the remaining excess according to his other claim.—*Robertson v. Edelhoff* (C. C. A.), 91 Fed. Rep., 642.

Weigher's Returns Submitted in Evidence.—Although a bill of discovery will not lie against the United States, yet under R. S. 724, which is a reenactment of the act of 1789, section 15 (1 Stat., 82), the United States will be compelled to produce the official weigher's returns of the weight of merchandise, on the motion of a defendant, the defense being that the duties were fully paid, and the motion being supported by an affidavit that an inspection or copies of the returns is necessary to enable the defendant to prepare for trial.

The remedy is not confined to the production of books and papers upon the trial.—*U. S. v. Youngs*, 10 Ben., 264; 28 Fed. Cas., 801.

MAIL IMPORTATIONS—PARCEL POST.

Cigars and Cigarettes from the Philippine Islands.—Fine not to be imposed on mail importations of cigars and cigarettes from the Philippine Islands.—Dept. Order (T. D. 34333).

Disposition of Abandoned Parcel-Post Packages.—Parcel-post packages from the United Kingdom of Great Britain and Ireland, and Germany, abandoned by senders, to be delivered into the custody of customs officers and sold for benefit of the United States. Duties to be deducted in accordance with Department Circular 39 of March 20, 1905 (T. D. 26175).—Dept. Order (T. D. 26904).

Dutiable Goods Imported by Mail.—Dutiable goods can not lawfully be imported in the foreign mails under the international postal treaty of Berne of October 9, 1874 (19 Stat., 577). Such goods are, in the hands of the receiver of them from the post office, subject to seizure, and the fact that there was no intent on the part of the sender or receiver of them to defraud the United States of the duty does not render the customs officers liable to an action for making the seizure.—*Von Cotzhausen v. Nazro*, 107 U. S., 215.

Free Entry of Books by Mail for Institutions Under Paragraph 519.—In cases where institutions file copies of their charters or articles of association

showing that they are entitled to import books free of duty under the provisions of paragraph 519 of the tariff act, the names of the institutions may be placed upon a "free list" kept by collectors for that purpose. Upon importation of books and other articles mentioned in paragraph 519, such articles may be passed free of duty, without requiring an affidavit to be filed with each importation. This privilege is restricted to small importations by mail, addressed directly to the institution for which intended.—Dept. Order (T. D. 33769).

Formal Entry for Mail Importations.—Regular entries of parcel-post packages should be liquidated before the same are forwarded.—Dept. Order (T. D. 29881).

Formal customs entry will be required for parcel-post packages when the appraised foreign market value of the contents exceeds by more than 25 per cent the value declared by the sender. Like entry will be required where the value of the packages exceeds \$100. Such entries will thereupon be subject to the customs laws and regulations concerning regular importations.—Dept. Order (T. D. 29826).

Importations by Parcel Post.—A convention with Great Britain provides that the merchandise imported under it shall be subject to all customs duties or customs regulations enforced in the United States and that the merchandise shall be delivered to the addressee upon payment by him of the duties properly chargeable thereon. This provision waives the necessity of a formal entry, except when this is required, and a right of appeal to a classification board remains. In re Chichester (48 Fed., 281) distinguished.

Where an importer files a protest within 15 days after the payment of duties to the postmaster at Lynn, Mass., but not within 15 days after the ascertainment and liquidation of duties by the collector at New York or his subordinate officer, the protest is not filed within statutory time unless the sum received by the Government official is taken in payment of "fees, charges, and exactions other than duties."—U. S. v. General Electric Co. (Ct. Cust. Appls.), T. D. 33494; (G. A. 7402) T. D. 32957 reversed.

Importations of Books by Mail.—While importations of merchandise generally through the mails are prohibited and liable to seizure, unless under the provisions of parcels-post conventions made by the United States with certain foreign countries, books are made an exception to this rule and may be so imported, under the Universal Postal Union Convention. No duty is collectible on any book valued at less than \$1.—T. D. 26855 (G. A. 6207).

Prize Packages.—Packages containing envelopes filled with sachet powder, fountain pens, stick pins, collar buttons, etc., of trifling value imported through the mails as prizes for selling the perfumery are not lottery matter, but are dutiable, and such importations are illegal. Disposition of articles.—Dept. Order (T. D. 20771).

Prohibited Importations.—The department has decided (T. D's. 18887 and 20540) that books are the only articles, subject to duty, which can be legally imported in the mails. All other dutiable mail matter should be seized, and for the first offense may be released upon payment of a fine equal to the duty, and for a second offense, unless it shall appear that the addressees had no knowledge of the prohibition, released only upon payment of the appraised value, viz, the foreign value with duty added. In no case will officers of the customs release property under seizure, the duty on which is in excess of \$25, without first obtaining the approval of the Secretary of the Treasury.

The addressees of dutiable mail packages should be informed of the prohibition under the Universal Postal Union Convention of such importations, and that the appraised value will be exacted on such subsequent importations.—Dept. Order (T. D. 20629).

Parcel-Post Packages and Unsealed Packages in the Postal-Union Mails addressed for delivery in the various States, as indicated by the following list, will hereafter be forwarded from the exchange offices of receipt to the offices indicated in the list for examination and assessment of duty by the customs officers at the ports indicated.

The packages will be forwarded by the postmasters at the exchange offices of receipt in one or more separate, closed pouches bearing a tag with the statement thereon "Supposed liable to customs duty."—Dept. Order (T. D. 33011).

PORTO RICO.

Abolition of Duties Under Section 3 of the Porto Rican Act of April 12, 1900.—On and after July 25, 1901, all merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico are entitled to entry free of duty, under the proviso to section 3 of the act of April 12, 1900, and the following resolution and proclamation pursuant thereto.

Merchandise withdrawn from warehouse on and after July 25, 1901, is exempt from duty under said law, resolution, and proclamation and Treasury decision 23173 of July 11, 1901.—Dept. Order (T. D. 23202).

Coffee.—The department refers to your letter of May 1 last and previous correspondence relating to the dutiable classification of Porto Rican coffee exported and returned, and also of coffee of foreign growth imported into Porto Rico, in view of the first provisos to sections 2 and 3 of the act of April 12, 1900.

The question was submitted to the Attorney General for an opinion, and in his opinion, dated the 30th ultimo, hereto attached, it is held that Porto Rican coffee exported and returned and foreign coffee imported into Porto Rico are free of duty under the tariff act of October 3, 1913.—Dept. Order (T. D. 34672).

Insular Possessions—Merchandise Therefrom Not Subject to Duty.—Where merchandise is alleged not to have been imported at all, but to have been brought from one domestic port to another, the Board of General Appraisers has no jurisdiction and an action for money had and received will lie against the collector to recover back duties assessed upon such property and paid under protest. This ruling has reference to goods imported into the United States from Porto Rico during the period between the ratification of the treaty of peace with Spain, April 11, 1899, and May 1, 1900, the date when the Foraker Act, so called, took effect. *De Lima v. Bidwell* (182 U. S., 1); *Goetze v. U. S.* (id., 221); *The Insular Cases*.

With the ratification of the treaty of peace with Spain, April 11, 1899, the island of Porto Rico ceased to be a "foreign country" within the meaning of the tariff laws, and duties collected on merchandise imported from Porto Rico during June, July, or September, 1899, were illegally exacted. *De Lima v. Bidwell* (182 U. S., 1); *The Insular Cases*.

Duties upon imports from the United States to Porto Rico collected by the military commander and by the President as Commander in Chief from the time possession was taken of the island until the ratification of the treaty of peace were legally exacted under the war power, but this right to exact

duties upon importations from Porto Rico to New York ceased with the ratification of the treaty of peace, and with it the correlative right to exact duties upon imports from New York to Porto Rico. *Dooley v. U. S.* (182 U. S., 222); *Armstrong v. U. S.* (182 U. S., 243); *The Insular Cases*.

In passing upon the question of the dutiability of merchandise imported into New York from Porto Rico upon which duty had been assessed under the provisions of the act of May 1, 1900, known as the Foraker Act, imposing duties on goods imported into the United States from Porto Rico, it was held that the island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution; that the Foraker Act is constitutional so far as it imposes duties upon imports from such islands, and that duty on a cargo of oranges imported into New York from Porto Rico in November, 1900, was legally exacted. *Downes v. Bidwell* (182 U. S., 244); *The Insular Cases*.

The constitutional inhibition against export duties is limited to articles exported to a foreign country and has no application to Porto Rico, which in the case of *De Lima v. Bidwell* (182 U. S., 1) was held not to be a foreign country within the meaning of the general tariff law then in force. *Dooley v. U. S.* (183 U. S., 151); *The Insular Cases*.

The duty imposed by the act of Congress taking effect May 1, 1900, known as the Foraker Act, upon merchandise going into Porto Rico from the United States is not an export tax or duty, and the act is constitutional.—182 U. S., 1, 221, 222, 243, 244; 183 U. S., 151.

Jute Bags for Sugar.

Imported into Porto Rico from Germany, are not entitled to free entry under section 3, act of April 12, 1900 (31 U. S. Stat., 77), and War Department Circular 115 of January 17, 1899. The exemption from duty accorded by said section 3 to merchandise admitted free under orders theretofore made by the Secretary of War extends only to such goods "when imported from the United States."

JURISDICTION OF BOARD.—Under section 14 of said act of April 12, 1900, the Board of Classification has jurisdiction to examine and decide protest cases arising upon decisions of collectors of customs on the island of Porto Rico, as to the rate and amount of duties upon merchandise imported into that island from foreign countries. In *re Fritze* (G. A. 4739) followed.—T. D. 23269 (G. A. 4988).

Porto Rico a Foreign Country for Tariff Purposes.

FACTS JUDICIALLY RECOGNIZED.—The Board of General Appraisers, sitting as a board of classification, will take judicial cognizance of all laws, executive proclamations, and public documents, showing the political and fiscal relations of this country to the Kingdom of Spain and to the island of Porto Rico.

TREATIES.—The treaty of Paris, made December 10, 1898, by which Porto Rico was ceded by Spain to the United States (30 Stat., 1754), became the "supreme law of the land," within the meaning of Article VI, section 2, of the United States Constitution, as an act of Congress is, only so far as, not being merely executory, it prescribes a rule by which the rights of the private citizen or subject may be determined and enforced in a court of justice. In other respects it addresses itself to the political and not to the judicial department of the Government.

TARIFF RELATIONS.—The cession of Porto Rico to the United States did not ipso facto bring that island within the operation of the general tariff laws of this country, without special congressional legislation on this subject.

AUTHORITY OF PRESIDENT TO MAKE WAR TARIFFS.—The President of the United States, in his capacity as Commander in Chief of the United States Armies, was fully authorized to establish a military government and a war tariff in said territory, which was acquired from Spain by conquest, the title being only confirmed and perfected by the terms of the subsequent cession and treaty of peace.

WAR TARIFF SUPERSEDED ONLY BY CONGRESS.—The only mode by which this provisional military government and its existing war tariff can be superseded or terminated is by affirmative legislation on the part of Congress.

PORTO RICO STILL A FOREIGN COUNTRY FOR TARIFF PURPOSES.—Until Congress, by special legislation, extends the general or other tariff laws over such newly acquired territory, and establishes therein collection districts, with ports of entry and clearance for vessels, the island, for tariff purposes, remains a "foreign country," and its ports are not domestic ports, however the island may be viewed in its international relations.

QUERE.—Whether Congress, under its constitutional power to regulate commerce, or "to make all needful rules and regulations respecting the territory or other property belonging to the United States" (Art. IV, sec. 3, U. S. Const.) can levy any duties on importations of merchandise from territory acquired by conquest or treaty, or can make a separate tariff law for such territory with rates not uniform with those levied in the general tariff law, quere.—*T. D. 22018* (G. A. 4658). Compare *De Lima v. Bidwell* (182 U. S., 1), and *Goetze v. U. S.* (182 U. S., 221); *The Insular Cases*.

Porto Rico, American Territory After April 11, 1899.—Sugar which left Porto Rico on April 8, 1899, while the island was still Spanish territory, but which did not arrive at the port of New York until after the taking effect of the treaty ceding the island to the United States, was not subject to duty, as at the time of its arrival Porto Rico had ceased to be a foreign country.—*American Sugar Refining Co.*, 124 Fed. Rep., 683.

Porto Rico ceased to be a foreign country for tariff purposes on April 11, 1899, on which day ratifications of the treaty with Spain were exchanged, and merchandise entered at any hour on that day was not subject to duty.—*Howell v. Bidwell*, 124 Fed. Rep., 683.

The treaty by which the island of Porto Rico was ceded to the United States became effective on April 11, 1899, when ratifications were exchanged, and not on December 10, 1898, when it was signed, nor on February 16, 1899, when it was ratified by the Senate and the President of the United States, nor on March 19, 1899, when it was ratified by the Queen Regent and Cortes of Spain. Discussion of when treaties become effective.—*Armstrong v. Bidwell*, 124 Fed. Rep., 690.

Protests From Porto Rico.—Under section 14 of the act of Congress of April 12, 1900, the board of classification has jurisdiction to examine and decide protest cases arising upon decisions of collectors of customs on the island of Porto Rico.—*T. D. 22410* (G. A. 4739).

Smuggling From United States to Porto Rico.—It was not a crime under the laws of the United States to smuggle goods into Porto Rico from the United States, after that island had passed into American control, and when such goods would have been nondutiable if imported regularly.

No greater right exists to collect a penalty for the nonpayment of a customs duty than for the payment of the duty itself; and money paid under the compulsion of a void judgment may be recovered, as where a fine is imposed for smuggling merchandise in a case to which the smuggling laws do not apply.—*Basso v. U. S.* (Ct. Cls.), *T. D. 27947*.

Tonnage Duties and Light Dues exacted in Porto Rico from Spanish merchant vessels. Jurisdiction of general appraisers.

Protests based on the exaction of duties on tonnage will be dismissed by the board of classification for lack of jurisdiction, that class of cases being expressly excepted from those which the board is invested with authority to decide under section 14 of the customs administrative act of June 10, 1890. But protests will be entertained when relating to light dues.

It is held that there is no discrimination between American and Spanish merchant vessels of the kind mentioned in Article XV of the treaty of peace between the United States and Spain—that is, as to port charges, light dues, etc.—T. D. 22507 (G. A. 4773).

STATUTES—CONSTITUTIONALITY.

Act of October 1, 1890.—The act of October 1, 1890, is constitutional and not void because of the omission of part of section 30 as the act passed from the engrossed bill as signed.—T. D. 10553 (G. A. 203).

Acts of March 3, 1883, and October 1, 1890.—The tariff acts of March 3, 1883, and October 1, 1890, are constitutional.—T. D. 12690 (G. A. 1339); T. D. 12691 (G. A. 1340); T. D. 12692 (G. A. 1341). In re Sternbach (C. C.), 45 Fed. Rep., 175; T. D. 12694 (G. A. 1343).

Acts of May 9 and October 1, 1890.—The act of May 9, 1890 (26 Stat., 105), and the tariff act of October 1, 1890, are constitutional.—T. D. 10336 (G. A. 57); T. D. 12691 (G. A. 1340).

Act of June 10, 1890.—The Board of General Appraisers declines to consider the question of the constitutionality of the act from which it derives its existence.—T. D. 10350 (G. A. 71).

The act of June 10, 1890, is constitutional.—T. D. 12692 (G. A. 1341); T. D. 12693 (G. A. 1342).

Tea—Condemnation Act.—Acting under authority of the act of March 2, 1897, designed to prevent the importation of impure and unwholesome tea, the Secretary of the Treasury fixed and established certain uniform standards of quality, etc., for tea. Certain imported tea was found on examination at the time of importation, and later by a Board of General Appraisers, not to meet the standard that had been fixed for quality, and was therefore ordered by the collector to be destroyed in accordance with the requirements of said law. It appeared that the importers had had notice of the proceedings resulting in the condemnation of their tea, and that said proceedings had been conducted in accordance with law; also, that the tea was pure but of very low grade, failing to meet the quality test only. *Held*, that the authority given the Secretary of the Treasury to fix standards of tea is not unconstitutional as being a delegation by Congress of legislative power; that Congress, in its complete power over foreign commerce, might provide standards that would exclude some grades of pure tea; that the destruction of tea for failure to equal the standards is not a deprivation of property without due process of law, within the prohibition of the Constitution, and that said act was not unconstitutional in that it failed to provide that the importer should be given notice and opportunity to be heard in the proceedings leading to rejection of his tea.—Buttfield v. Stranahan (U. S.), T. D. 25119.

The present tariff law vests in the administrative officers the power to fix the standard of quality of teas, which does not necessarily depend upon their purity and wholesomeness, and to determine finally the question whether an importation meets the requirements so fixed, and such provisions are a constitutional exercise of legislative power.—Buttfield v. Bidwell, 94 Fed. Rep., 126.

Under the act of March 2, 1897 (29 Stat., 604), tea was seized as inferior. Bill in equity for injunction to prevent destruction or marking as condemned, the bill claiming that the act is unconstitutional. *Held*, that the mere fact that a law is unconstitutional does not entitle a party to relief by injunction against proceedings in compliance therewith, but it must appear that he has no remedy by the ordinary processes of the law or that the case falls under some recognized head of equity jurisdiction; and in this case the averments of the bill did not justify such an interference with executive action. The seizure of importations of tea under this act and the establishment of regulations and standards hereunder, publicly promulgated and known, because falling below the standards prescribed, could inflict no other injury than what it must be presumed was anticipated, and the interposition of a court of equity can not properly be invoked under such circumstances to determine in advance whether complainants, if they imported teas of that character, could escape the consequences on the ground of the invalidity of the law.—*Cruikshank v. Bidwell*, 176 U. S., 73.

The provisions excluding from this country teas of an inferior quality and leaving the final determination of the question in respect thereto to the customs officers is a valid exercise of legislative power.—*Cruikshank v. U. S. (C. C.)*, 86 Fed. Rep., 7.

STATUTES—CONSTRUCTION OF—CLASSIFICATION.

Act of August 7, 1882.—The act of August 7, 1882, purports by its title to correct an error in R. S. 2504, but in the body of the act the clause to be corrected is quoted as part of "Schedule M of section 25." Section 25 contains no Schedule M, and bears upon an entirely different subject, and the language quoted is found in Schedule M, section 2504. *Held*, that the act corrects R. S. 2504.

The title of an act may be resorted to by the court for the purpose of elucidating what is obscure in the provision.—*Wilson v. Spaulding*, 19 Fed. Rep., 304.

Alcohol Used in the Arts.—The provision in section 61, act of 1894, providing for a rebate of tax on alcohol used in the arts, was not the case of a right granted in present to all persons who might after the passage of the law actually use alcohol in the arts, or in any medicinal or other like compounds, to a rebate or repayment of the tax paid on such alcohol, but that the grant of the right was conditional on use in compliance with regulations to be prescribed in the absence of which the right could not vest so as to create a cause of action by reason of the unregulated use.—*Dunlap v. U. S.*, 173 U. S., 65, 76.

Ambiguity.—The interpretation of doubtful and ambiguous words in a particular law are in revenue laws to be explained in subservience to the common policy of the country.—*U. S. v. Whidden*, 3 Ware, 269; 28 Fed. Cas., 535.

In all cases of ambiguity not only the contemporaneous construction of the courts but of the departments and even of the officials whose duty it is to carry the law into effect is controlling.—*Schell's Executors v. Fauche*, 138 U. S., 562.

The contemporaneous construction of an ambiguous law, followed uniformly for nine years by the Board of General Appraisers, the Treasury Department, and subordinate customs officials, without reversal by the courts, is of controlling authority.—*T. D. 21592 (G. A. 4552)*.

Whenever in the history of customs laws it is found that a certain expression has received in effect a statutory construction, or long and uniform use by

Congress or by the departments, that construction is controlling unless some other is necessary. This rule is of the highest authority and masters all others.—*Brennan v. U. S. (C. C. A.)*, T. D. 26317.

Absence of Sample of the Merchandise.—There was a chemical analysis of the glycerin of the importation. Proof of this was excluded because a sample of the glycerin analyzed was not produced. To make the production of a sample a condition precedent to the admission of proof of the analysis was error. The failure to produce a sample might affect the weight, but not the competency of the evidence offered.—*U. S. v. Alpers & Mott (Ct. Cust. Appls.)*, T. D. 33201; (*G. A. Ab.* 29966) T. D. 32847 reversed.

Classification of Merchandise Not in Public Stores.—The leather bags of the importation in question were contained in cases that were not sent to the public stores for examination. The importer's contention is that the bags did not contain toilet articles, but were assessed for duty as if they did contain them. The goods having gone into consumption and the veracity of the witness who testified being unquestioned, it was sufficient proof of the actual character of the leather bags, when there was produced and submitted by the importer a memorandum known as a "stock list" that contained a complete and accurate description of the articles in question, with the cost and sale prices thereof. It was not necessary to corroborate this testimony by offering samples of the merchandise. The goods were dutiable at 40 per cent ad valorem under paragraph 452, tariff act of 1909. *Bradley Martin v. U. S. (1 Ct. Cust. Appls., 134; T. D. 31185)*; *U. S. v. Hermann (154 Fed. Rep., 196)*.—*Stern Bros. v. U. S. (Ct. Cust. Appls.)*, T. D. 32167; (*G. A. Ab.* 25070) T. D. 31405 reversed.

"Article."—The word "article" as used in tariff acts is not to be restricted to articles put in a condition for final use, but is used in a broad sense and covers equally things manufactured, things unmanufactured, and things partially manufactured.—*Junge v. Hedden*, 37 Fed. Rep., 197.

The meaning of the term "article" when used in a tariff act.

In construing tariff acts an article may be held to be enumerated, although not specifically mentioned, if it be designated in a way to distinguish it from other articles.—*Junge v. Hedden*, 146 U. S., 233.

Articles Not Commercially Known at Time of Passage of Tariff.—The fact that at the date of the passage of an act imposing duties goods of a certain kind had not been manufactured does not withdraw them from the class to which they belong when the language of the statute clearly and fairly includes them.

The rule that where words are used in an act imposing duties which have acquired by commercial use a meaning different from their ordinary, the latter may be controlled by the former, is not applicable when the language used in the statute is unequivocal.—*Newman v. Arthur*, 109 U. S., 132.

An article not commercially known in this country at the time of the passage of a tariff law, but subsequently imported, and which in fact comes within the proper definition of a similar article then known and provided for in the act, and which is so designated commercially, is entitled to be classified as such.—*Matheson & Co. v. U. S. (C. C.)*, 90 Fed. Rep., 276.

Change in Language Does Not Necessitate Change in Meaning.—It is not every change in the terms of a statute from the one for which it is a substitute that results in a change of its general purpose. The change from the language "vegetable ivory in its natural state" (par. 596, tariff act of 1909) to the language "tagua nuts" (par. 620, tariff act of 1913) does not show any change in meaning.

An argument was made for a duty to be levied on ivory-nut slabs in the tariff act of 1913. The act contains no such provision, but admits "tagua nuts" free. This may be taken as an indication that Congress did not intend to levy a duty upon ivory-nut slabs.—*Andrews & Co. et al. v. U. S.* (Ct. Cust. Appls.), T. D. 37199.

Change of Classification.—The action of the customs officers in placing goods in a class other than that in which they were entered, in deciding that they were altered from the ordinary condition in which they were customarily imported in 1883, and that such alteration was made to evade duty, is *prima facie* evidence of each of these facts.—*U. S. v. Patton* (D. C.), 46 Fed. Rep., 461.

When an article has been so advanced by separate processes as to be adapted for a special purpose different from the original purpose, and to be sold to a different class of persons, and to be known under special commercial designations, it is no longer included under the original commercial designation.—*McLeod v. U. S.* (C. C.), 75 Fed. Rep., 927.

Chief Use of an Article.—The chief or predominant use to which an article is applied determines its classification, although it may be commonly, generally, and practically, and not merely exceptionally, used for other purposes. The chief or predominant use is that which, in ordinary language, is so called.—*Meyer v. Cadwalader* (C. C. A.), 89 Fed. Rep., 963. This case reversed the circuit court.

In considering the question of chief use it is the duty of the jury to give more attention to the course of trade in the original distribution of the goods among those who import them than to the guesses of individuals as to the various uses to which the articles may be put by individual consumers.—*Meyer v. Cadwalader* (C. C.), 49 Fed. Rep., 26.

The test of predominant use as applied to the classification of an article is only resorted to where necessary to properly classify an article falling within two or more classifications, either of which, standing alone, would adequately describe it, and where the article is enumerated by reference to its use.—*Smith v. U. S.* (C. C. A.), 93 Fed. Rep., 194.

In order to bring an importation within a class of merchandise specified in the tariff as used for certain purposes, the evidence should show that the article was used so generally for one of such purposes as to be understood, among those dealing in and using it, as falling within said class, but it is not necessary to show that it is universally used for that purpose.—*Lutz v. Robertson* (C. C.), T. D. 25606.

The classification of goods is to be determined by their chief value.

The plaintiff has the burden of proving that the chief use of the goods is such as to bring them within the schedule under which he claims they are dutiable.—*Hagedon v. Seeberger* (C. C.), 38 Fed. Rep., 401.

Classification, Rules of.—The settled rules of classification are as follows: (1) Commercial designation, which must be "definite, uniform, and general, and not partial, local, or personal." (*Maddock v. Magone*, 152 U. S., 368; *Sonn v. Magone*, 159 U. S., 417.) (2) Ordinary or proper designation, the more special or particular description predominating over those more general or less definite. (*Hedden v. Richard*, 149 U. S., 343; *Victor v. Arthur*, 104 U. S., 498.) (3) In the classification of merchandise under enumerations by descriptive component materials the component material of chief value will govern the rate of duty. (*Liebenroth v. Robertson*, 144 U. S., 35.) (4) If governed by use (in the absence of specific provisions to the contrary), the chief or predominant use will generally govern. (*Magone v. Wiederer*, 159 U. S., 555; 16 Sup. Ct., 122.) (5) If none of the above rules apply, the next resort must

be to the similitude class. (*Arthur v. Fox*, 108 U. S., 125; *Arthur v. Butterfield*, 125 U. S., 71.) (6) The last resort, after exhausting all others, is the general "catch all clause" of the tariff classification.—*T. D. 17159* (G. A. 3476).

Classification by Sample.—A case may be decided upon bare sample if classification can be determined by the application of general or common knowledge, as distinguished from expert knowledge. The question of classification of a baked article known as "shortbread" does not present such a case. *Shallus v. U. S.* (2 Ct. Cust. Appls., 456; *T. D. 32205*) and *U. S. v. Lun Chong & Co.* (3 Ct. Cust. Appls, 468; *T. D. 33041*) distinguished.—*T. D. 35916* (G. A. 7821).

Classification.—Where an importer on the trial of an action to recover duties fails to introduce any competent evidence of one of the essential facts in relation to the goods alleged in his protest and on which he based his claim for a different classification, the presumption of the correct classification will prevail and the direction of the verdict for the defendant is proper. Sustaining the circuit court.—*Davies v. Miller* (C. C. A.), 91 Fed. Rep., 647.

Under the act of May 9, 1890, the Secretary must finally classify the merchandise therein named, and that power is vested in no other officer.—*In re Ballin* (C. C.), 45 Fed. Rep., 170.

Commercial Designation.—The commercial designation established after the passage of a tariff act does not determine the classification of the articles in question.—*Dennison Manufacturing Co. v. U. S.* (C. C. A.), 72 Fed. Rep., 258.

He who contends that a term used in a tariff act has a commercial meaning which is different from its common meaning assumes the burden of maintaining his contention by a fair balance of the evidence. Either party may establish, if he can by proper proof, what he conceives to be the commercial meaning of a tariff term, even though it may differ from the commercial meaning which has been judicially attached thereto in another case litigated by a different importer. A commercial meaning established in one case will not be conclusively presumed to exist in another case where the parties are not the same. An established administrative practice can not overcome full proof of a commercial designation, for, if so, it would lie in the power of the administrative to defeat the legislative, since tariff acts are held to be enacted in the sense of the commercial meanings of their terms.—*Straus & Co. et al. v. U. S.* (Ct. Cust. Appls.), *T. D. 36982*.

In order to give a general term a specific trade meaning, to include only a particular class of articles, it must be shown that prior to the passage of the law such term was in commerce and trade at all ports and trade centers of the country a well-known, uniform, and universally accepted designation of such particular class.—*Carson v. Nixon* (C. C. A.), 90 Fed. Rep., 409; *Field v. U. S.* (C. C. A.), *id.*, 412.

The act of 1857 did not change the legal effect of the act of 1846. The plaintiffs were confined to testimony as to the commercial designation of an article at and previous to the passage of the act of 1846.—*Christ v. Schell*, 17 Leg. Int., 350; 5 Fed. Cas., 653.

The commercial designation or denomination of an article in the markets of the country when the law was passed will control its classification without regard to its scientific designation, or the material of which it may be made, or the use to which it may be destined or applied. *Twine Co. v. Worthington* (141 U. S., 468; 12 Sup. Ct. Rep., 55); 200 Chests of Tea (9 Wheat., 428) followed.—*T. D. 22521* (G. A. 4777).

Revenue laws class substances according to their denomination acquired by general use in our own trade.

According to the course of decisions in this court an exception contained in a proviso is a matter of defense and need not be negated in a libel of information.—200 Chests of Tea, 9 Wheat., 430.

The denomination of articles is construed according to the commercial understanding of terms used and not with reference to the materials of which such articles are made or the use to which they may be applied.—*May v. Simmons*, 4 Fed. Rep., 499.

The testimony of only one witness is not sufficient to prove an accepted use of a term in commerce.—*U. S. v. Oberle* (Ct. Cust. Appls.), T. D. 31545.

The "commercial designation" of an article, in order to control its classification under our tariff laws, must be its designation as understood in the trade and commerce of the United States, and evidence as to such designation elsewhere is inadmissible.—T. D. 18616 (G. A. 4014).

Commercial designation is a question of fact and the collector's finding is presumptively correct. The interpretation of words of common speech is a matter of law.—*American Bead Co. v. U. S.* (Ct. Cust. Appls.), T. D. 36259.

An article may be bought and sold by the specific name which indicates that precise article, and still a group of such articles may be known to trade and commerce by a commercial term which includes them in a special group and which still never appears on the face of an invoice or bill of the goods when the articles are described, because they are always described by the same specific name which refers to the particular article.

The fact that Congress before framing the tariff acts advises with manufacturing experts does not give rise to any rule of construction whereby words used therein may be interpreted according to the technical understanding of the manufacturers.—*In re Herrmann* (C. C.), 52 Fed. Rep., 941.

Commercial Meaning of Tariff Terms.—The rule is well settled that in interpreting a name or expression applied to articles upon which duties are laid Congress uses such terms in their ordinary commercial sense rather than in their distinctive or technical sense.

Whether an imported article is or is not known in commerce by the word or terms used in the tariff act is a question of fact for the jury and not a question of construction, and in the case of an appeal from a decision of the Board of General Appraisers it must be determined by the court as a question of fact.—*In re Wise* (C. C.), 73 Fed. Rep., 183.

In imposing duties Congress must be understood as describing the articles upon which duty is imposed according to the commercial understanding of the terms used in the law in our own markets.—*Curtis v. Martin*, 3 How., 106, 109.

Though generally the name by which an article is known in commerce is taken to include that article in a revenue law, yet by a course of legislation it may be made apparent that Congress did not intend to include a particular article under the name which among commercial men would include it.—*De Forrest v. Lawrence*, 13 How., 274.

Laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce, and hence it has become a settled rule in the interpretation of statutes of this description to construe the language adopted by the legislature, and particularly in the denomination of articles, according to the commercial understanding of the terms used. Whether a particular article was designated by one name or another in the country of its origin or whether it were a simple or mixed substance was of no importance in the view of the legislature. It applied its attention to the

description of the articles as they derive their appellations in our own markets, in our domestic as well as our foreign traffic, and it would have been as dangerous as useless to attempt any other classification than that derived from the actual business of human life.—*Elliott v. Swartwout*, 10 Pet., 137, 151.

Whether a particular article is designated by one name or another in the country of its origin, or whether it is a simple or mixed substance, is a matter of very little importance in the adjustment of our revenue laws, as those who frame such laws are chiefly governed by the appellation which the articles bear in our own markets and in our domestic and foreign trade.

The rule of law is well settled that whether an imported article is or is not known in commerce by the word or terms used in the tariff act is a question of fact for the jury and not a question^o of construction, and of course it must, in a case like the present, be determined by the court as a question of fact, the issue of fact as well as of law being submitted to the court.—*Tyng v. Grinnell*, 92 U. S., 467, 470.

Commercial and Common Meaning of Tariff Terms.—It has long been a settled rule of the interpretation of statutes imposing duties on imports that if words used therein to designate particular kinds or classes of goods have a well-known signification in our trade and commerce different from their ordinary meaning among the people, the commercial meaning is to prevail unless Congress has clearly manifested a contrary intention, and that it is only when no commercial meaning is called for or proved that the common meaning of the words is to be adopted.—*Cadwalader v. Zeh*, 151 U. S., 171, 176.

Where an importer seeks by reason of a commercial designation to withdraw certain goods from the operation of terms of general description in a tariff act, which would in ordinary speech include them, he must show by a fair preponderance of evidence not only that the goods were, at the time of the passage of the act, known in trade and commerce by various trade names, but also that the terms of general description then had in the parlance of trade and commerce a restricted meaning excluding the goods in question.—*Clafin v. Robertson* (C. C.), 38 Fed. Rep., 92.

Where words have acquired among importers and large dealers a meaning different from that which they have in ordinary speech, such trade meaning is to be adopted in the interpretation of the law.

To establish the fact that certain articles are not to be included under a general term which in its common acceptance is broad enough to include them, it is not sufficient to show that they are always bought and sold by certain specific names and that the general term used in the tariff is not used in such commercial transactions; this must be supplemented by proof that the general term used in the tariff has in trade a restricted meaning which would exclude the article in controversy.—*Sidenberg v. Robertson* (C. C.), 41 Fed. Rep., 763.

The commercial designation, as we have frequently decided, is the first and most important designation to be ascertained in settling the meaning and application of the tariff laws. But if the commercial designation fails to give an article its proper place in the classifications of the law, then resort must necessarily be had to the common designation.—*Robertson v. Salomon*, 130 U. S., 412, 415.

In construing a tariff act when it is claimed that the commercial use of a word or phrase differs from the ordinary signification of such word or phrase, in order that the former may prevail over the latter it must appear that the commercial designation is the result of established usage in commerce and trade and that at the date of the passage of the act the usage was definite, uniform, and general and not partial, local, or personal. In this case mugs, plates, cups,

and saucers made of china, of small size, were decided to be subject to duty at 60 per cent under Schedule B, act of 1883, and not under Schedule N as toys.

The above principle also laid down in *Sonn v. Magone* (159 U. S., 417, 420).—*Maddock v. Magone*, 152 U. S., 368.

Undoubtedly the language of tariff acts is to be construed according to its commercial signification; but it will always be understood to have the same meaning in commerce that it has in the community at large unless the contrary is shown.—*Swan v. Arthur*, 103 U. S., 597, 598; *Schmieder v. Barney*, 113 U. S., 645, 648.

Construction of Tariff Acts.—Tariff acts must be construed according to commercial usage and understanding.—*Bacon v. Bancroft*, 1 Story, 341; 2 Fed. Cas., 325.

Delaines.—Goods imported in 1862 and 1863 and duty of 30 per cent ad valorem paid under the mixed-material clause of the act of March 2, 1861 (12 Stat., 192), and 2 cents per square yard under section 9, act of July 14, 1862 (12 Stat., 553). The importer claimed that under the act of 1862 the goods were subject only to a duty of 30 per cent. It appeared in evidence that the goods were known in trade and were bought and sold as poil de chevres, reps, plaids, lusters, and Saxony dress goods; that they were always woven in colors, the yarns being dyed or colored before weaving; that they never existed in the gray or uncolored condition, but were made as delaines are made, with a cotton warp and worsted weft, the difference between them and delaines being that the latter are a fabric of all wool, or cotton warp and worsted weft, made of yarns not dyed, the cloth being printed or dyed in the piece; that as early as 1857 both the all-wool delaines and those with cotton warp and wool or worsted filling were known in trade by names changing from time to time to suit the fancy of importers and purchasers. It also appeared that in several other particulars the goods differed from delaines. The court charged the jury that, in addition to the duty of 30 per cent imposed by the act of 1861, the act of 1862, "imposed a specific duty on all delaines, whether colored or uncolored, and all goods of similar description to delaines, whether colored or uncolored, if such delaines or goods of similar description do not exceed in value 40 cents a square yard," and that it was for them to determine whether the goods were "similar in description to these delaines; whether they are colored or uncolored." *Held*, that the instruction was proper.

The term "similar description" is not a commercial term, and the tariff acts do not contemplate that goods classed under it shall be in all respects the same. It is competent to inquire of a witness, in a suit to recover duties paid under the act of July 14, 1862 (12 Stat., 543), section 9, whether the words "of similar description" is a commercial term, and, if so, what is its commercial meaning; but it is not competent to inquire whether the particular goods alleged to have been improperly subjected to duty were of similar description to delaines.—*Greenleaf v. Goodrich*, 101 U. S., 278.

Ladies' dress goods made wholly of worsted, called "mousseline de laines," were imported and duty exacted at 24 per cent. The importer claimed that the goods were dutiable at 19 per cent as manufactures of worsted or as manufactures of which worsted was a component material. What goods are included in the term "delaines" is a question which the jury must determine upon evidence showing how that term was used at the date of the passage of the act by importers and dealers in that class of goods.

The presumption is that the decisions of the collector and Secretary are correct, and the plaintiff must overcome that presumption by a fair pre-

ponderance of proof as to the commercial use of the term at the date of the act.—*Hutton v. Schell*, 25 Int. Rev. Rec., 168; 12 Fed. Cas., 1099.

Departmental Construction.—The construction given by a department charged with enforcing an act is material only in case of doubt.—*U. S. v. Tanner*, 147 U. S., 661.

The construction of a tariff act by the Treasury Department is not conclusive upon the collector or the importer, and the collector is not justified by such instructions in imposing duties not warranted by law.—*Lennig v. Maxwell*, 3 Blatch., 125; 15 Fed. Cas., 312.

A regulation of a department can not repeal a statute, neither is a construction of a statute by a department charged with its execution to be held conclusive and binding upon the courts of the country unless such construction has been continuously in force for a long time.—*Merritt v. Cameron*, 137 U. S., 542, 551, 552.

Doubtful Classification.—Where the evidence as to the commercial designation of an article is conflicting, the ordinary name given it in common speech, when proper under the definition given by the dictionaries, will govern in making classification.—*Bour v. U. S. (C. C.)*, 91 Fed. Rep., 533.

The appraiser should decide doubtful points in favor of the Government, especially where the classification is dependent upon the interpretation of the language of the tariff, but this rule does not apply to questions exclusively of fact.—*T. D. 14832 (G. A. 2515)*.

Where the rate of duty depends upon conditions not within the cognizance of the customs officers, the collector is justified in assessing the highest of the rates that may be applicable, leaving it to the importer to secure the imposition of the proper rate by presenting satisfactory evidence of the essential facts.—*Buehne Steel Wool Co. v. U. S. (C. C. A.)*, *T. D. 28599*.

In cases of doubt in the construction of tariff laws the courts resolve the doubt in favor of the importer.—*Matheson & Co. v. U. S. (C. C. A.)*, 71 Fed. Rep., 394.

In cases of doubt as to the classification of an imported article the construction most favorable to the importer should be adopted.—*U. S. v. Davis (C. C. A.)*, 54 Fed. Rep., 147.

In case of serious ambiguity in a tariff act or doubtful classification of articles or vague or doubtful interpretation the construction of the act is to be in favor of the importer.—*U. S. v. Ullman*, 4 Ben., 547; 13 Int. Rev. Rec., 68; 28 Fed. Cas., 323.

In case of serious ambiguity in the language of a tariff act or doubtful classification of articles the construction must be in favor of the importer, as duties are never imposed upon vague or doubtful interpretation.—*Powers v. Barney*, 5 Blatch., 202; 19 Fed. Cas., 1234.

Words in a tariff act are to be generally interpreted according to their meaning in trade and commerce at the time of the passage of the act.

Where a clause in a tariff act is ambiguous and no light for its interpretation can be derived from provisions of prior statutes relating to the same subject, that construction must be adopted which is most favorable to the importer.—*McCoy v. Hedden (C. C.)*, 38 Fed. Rep., 89.

Entireties.—The fact that articles in separate parts are invoiced as entireties is not controlling and will not prevent a separate classification when such classification is otherwise proper. 30 Fed. Rep., 465, affirmed.—*In re Crowley (C. C. A.)*, 55 Fed. Rep., 283.

Enumerated Articles—Commercial Meaning.—In the interpretation of customs laws nothing is better settled than that words are to receive their

commercial meaning, and that when goods of a particular kind, which would otherwise be comprehended in a class, are subject to a distinct rate of duty from that imposed upon the class generally they are taken out of that class for the purpose of the assessment of duties.—*Seeberger v. Cahn*, 137 U. S., 95.

Eo Nomine Rule.—The existence of the *eo nomine* rule implies that there is sometimes reasonable ground to claim that merchandise is embraced in the language of more than one paragraph, and its effect is to classify such merchandise under the one which more precisely describes it. The question considered is not whether one overlaps the other or whether one is a genus and the other a species, although incidentally either of these questions may arise; but the controlling factor is always whether the language of the one more accurately describes the merchandise than that of the other, and when so found, unless something appears which indicates that it was the intention of Congress that the merchandise should be classified without regard to the *eo nomine* rule, it is applied.

With reference to Jacquard figured cotton laces not upholstery goods, the provision for laces in paragraph 358, tariff act of 1913, is more specific than 'all other Jacquard figured manufactures of cotton,' paragraph 258, and classifies them for duty.—*Carter & Son v. U. S.* (6 Ct. Cust. Appls., 253; T. D. 35475) and *Wilson & Son v. U. S.* (6 Ct. Cust. Appls., 255; T. D. 35476).—*Levi, Sondheimer & Co. v. U. S.* (Ct. Cust. Appls.), T. D. 37012.

Language which describes a class may, under some circumstances, be more specific than that which contains a specific designation. Notwithstanding that article may be literally included within a designation *eo nomine* contained in a certain paragraph of the customs laws, it may, on account of its relations to a peculiar class, be referred to some other paragraph.—*Brennan v. U. S.* (C. C. A.), T. D. 26317.

Evidence—Question of Doubt.—In the administration of the customs laws, the importer is entitled to the benefit of whatever doubt may exist in determining the correct classification of a commodity. This, however, is such a doubt as arises out of the evidence in the case or the application of the law, and not one which, like in the administration of the criminal law, may arise out of the lack of evidence. Where on any proposition there is no evidence submitted there can be no such doubt as should be resolved in favor of the importer, for in that case the presumption is in favor of the correctness of the collector's action.—T. D. 25237 (G. A. 5658).

Experimental Use as Against General Use.—Evidence as to the edibility of an article, based merely on an experimental use by a witness made to prepare himself to testify, can not be accepted against testimony that the article has never been used, even in exceptional cases, as human food.—T. D. 30141 (G. A. 6943).

Expert Knowledge—Common Knowledge.

EXPERT KNOWLEDGE.—In passing on the classification of imported merchandise the members of the board can not lawfully exercise knowledge as experts, but are governed by the evidence introduced at the hearing.

OFFICIAL SAMPLE PRIMA FACIE CORRECT.—If an official sample is introduced in evidence it is presumed to be a proper representation of the goods in question, unless shown to be erroneous. And it becomes the duty of the board to determine as a question of fact whether the claim is supported by the evidence afforded by the sample.

COMMON KNOWLEDGE.—Common knowledge may be exercised in reaching a conclusion, but where expert knowledge is required the board will decline

to pass on the issue raised by the protest in the absence of evidence.—T. D. 32241 (G. A. 7322).

Findings by General Appraisers.—On appeal from the Board of General Appraisers the circuit court should not disturb the board's findings upon doubtful questions of fact, especially as to questions which turn upon the intelligence and credibility of witnesses who have been produced before the board.—*Balaban v. U. S. (C. C.)*, T. D. 30187.

General Trade Meaning—Change of Classification.—If articles identical in use with the samples were not generally known, the question whether the diversities were material arises, and this may be a question of law when the facts are ascertained. Change which renders an article substantially different as an article of commerce and adapts it to all the uses of another article, on which a higher rate is levied, destroys its legal identity and is a material change.

When the question is whether goods bore a particular name in particular transactions, it is necessary they should have been so known generally and not in particular places, to the exclusion of others, or to particular persons only.

On this question negative evidence from those engaged in trade has much weight.—*Wilkinson v. Greely*, 1 Curt., 439; 29 Fed. Cas., 1259.

Importer's Tentative Classification on Entry.—The tariff classification of imported merchandise as indicated by importers on their entries of such goods is merely tentative and does not preclude them from seeking a different classification after entry. It devolves upon the collector to assess the proper rate irrespective of the rate mentioned in the entry.—T. D. 25461 (G. A. 5740).

Intent.—The general purpose of the act of 1890, to protect and foster American industries, is not to override a plain provision contained therein, which, in a particular instance, fails to carry out such purpose or operates in contravention of it. The particular intent must prevail over the general intent.—*In re Schallenberger (C. C.)*, 72 Fed. Rep., 491.

Laws imposing duties are not construed beyond the natural import of the language, and duties are never imposed upon the citizen upon doubtful interpretation.

Articles grouped together are to be deemed of a kindred nature.—*Adams v. Bancroft*, 1 Fed. Cas., 84.

Intent is not an element in determining the proper classification of imported articles, and merchants are at liberty so to manufacture and so to import their goods as to subject them to the lowest possible duties under the tariff laws.—*Johnson v. U. S.*, 123 Fed. Rep., 997.

Interpretation of Statute.—The words used in tariff act when not technical, either as having a special sense by commercial usage or as having a scientific meaning different from the popular meaning—in other words, when they are words of common speech—are within the judicial knowledge and their interpretation is a matter of law.—*Toplitz v. Hedden*, 33 Fed. Rep., 617.

When the terms employed in the tariff laws have a special restricted meaning, according to the general usage of the trade to which the articles appertain, it is to be presumed that Congress used them in such restricted sense; but the fact that they have such restricted meaning must be clearly established, otherwise they are to be interpreted according to their common popular significance.

Where the collector classifies an article under a different designation from that on the invoice, the burden is upon the Government to show that his classification is proper.—*Kennedy v. Hartranft*, 9 Fed. Rep., 18.

Invoices.—Invoice of imported goods not a controlling factor in classification.—*T. D. 21233* (G. A. 4450).

Iron Links.—Pieces of round iron cut in suitable lengths, some being straight and others curved or bent to a U shape, and which are adapted to be formed into links or cables, are properly invoiced as "straight, bent, and turned links," respectively, it appearing that they are known under those terms in trade and commerce.—*U. S. v. 31 Boxes*, 28 Fed. Cas., 56.

Laces.—The question whether the goods known as "yak lace," which are composed entirely of worsted, are dutiable as dress trimmings or as manufactures of worsted depends on whether they are known in commerce as dress trimmings or as laces, which is a question of fact for the jury upon the testimony of merchants dealing in such goods.—*Duden v. Arthur*, 24 Int. Rev. Rec., 380; 7 Fed. Cas., 1146.

Whether certain black laces, handmade and all of silk, are dutiable as silk laces under section 8, act of June 30, 1864, or as "thread laces" under section 20, act of 1861, and section 6, act of 1862, depends upon the question whether they were known in commerce by the one or the other designation, which is a question for the jury on the evidence.—*Duden v. Murphy*, 18 Int. Rev. Rec., 174; 7 Fed. Cas., 1148.

Language of Commerce.—The language of commerce when used in laws imposing duties, and particularly when employed in the denomination of articles, must be construed according to the commercial understanding of the terms employed.

This rule is equally applicable when a term is confined in its meaning not merely to commerce but to a particular trade, and in such case also the presumption is that the term was used in its trade signification.—*Hedden v. Richard*, 149 U. S., 346, 348.

Words of classification are, in general, to be construed either in their common or their commercial meaning, as opposed to their scientific sense.—*U. S. v. Buffalo Natural Gas Fuel Co. (C. C. A.)*, 78 Fed. Rep., 110.

Tariff laws are addressed to the understanding of merchants and, as a general rule, the descriptive language in such laws is to be taken in a commercial sense.—*In re John Hope & Sons Engraving & Manufacturing Co. (C. C.)*, 100 Fed. Rep., 286.

Liberal Construction of Revenue Laws.—Revenue and duty acts are not in the sense of the law penal acts, and are not therefore to be construed strictly. Nor are they, on the other hand, acts in furtherance of private rights and liberty or remedial, and therefore to be construed with extraordinary liberality. They are to be construed according to the true import and meaning of their terms; and when the legislative intention is ascertained that, and that only, is to be our guide in interpreting them.—*U. S. v. Breed*, 1 Summ., 159; 24 Fed. Cas., 1222.

Revenue laws are not to be regarded as penal and therefore to be construed strictly. They are remedial in their character and therefore to be construed liberally to carry out the purposes of their enactment. What is implied is as much a part of a statute as what is expressed.—*U. S. v. Hobson*, 10 Wall., 395, 406.

Revenue laws are not penal in the sense that requires them to be construed with great strictness in favor of the defendants. They are rather to be regarded as remedial in their character and intended to prevent fraud, suppress public wrong, and promote the public good, and they should be so construed as to carry out the intention of the legislature in passing them and most

effectually accomplish these objects.—28 Cases of Wine (2 Ben., 63; 7 Int. Rev. Rec., 4; 1 Am. Law T. Rep. U. S. Cts., 15), 24 Fed. Cas., 415.

Revenue laws are more remedial than penal in their nature. They are intended to prevent fraud, suppress public wrong, and to promote the public good, and should always be so construed as to effectually carry out the purposes and objects which they were intended to accomplish.—*Anglo-Californian Bank v. Secretary of the Treasury* (C. C. A.), 76 Fed. Rep., 742, 748.

It is a general rule in the interpretation of all statutes levying taxes or duties upon subjects or citizens not to extend their provisions by implication beyond the clear import of the language used or to enlarge operation so as to embrace matters not specially pointed out, although standing upon a close analogy. In every case of doubt such statutes are construed most strongly against the Government and in favor of the subjects or citizens, because burdens are not to be imposed beyond what the statutes expressly and clearly import.—*U. S. v. Wigglesworth*, 2 Story, 369; 28 Fed. Cas., 595.

Revenue statutes, including those fixing duties on imports, are neither remedial laws nor laws founded upon any public policy and should be construed most strongly against the Government; for burdens should not be imposed beyond what such statutes expressly import.—*Rice v. U. S.* (C. C. A.), 53 Fed. Rep., 910.

Manufacture.—The mere fact of the application of labor to an article, either by hand or by mechanism, does not make it necessarily a "manufactured article" within the meaning of the tariff laws, unless the labor has been carried to such an extent that the article suffers a species of transformation and is changed into a new and different article, having a distinctive name, character, or use. *U. S. v. Semmer* (41 Fed. Rep., 324) followed.—*Baumgarten v. Magone* (C. C.), 50 Fed. Rep., 69.

The application of labor to an article either by hand or by mechanism does not make the article necessarily a manufactured article within the meaning of the term as used in the tariff laws. Washing and scouring wool does not make the resulting wool a manufacture of wool. Cleaning and ginning cotton does not make the resulting cotton a manufacture of cotton.

Questions of doubt should be resolved in favor of the importer, as duties are never imposed upon the citizen upon vague and doubtful interpretation.—*Hartranft v. Weigmann*, 121 U. S., 609, 616.

An article may be crude for the purposes of classification by reason of the use to which it is applied, where it is crude in the sense that it is unrefined, although it may be the result of some manufacture.—*Roessler & Hasslacher Chemical Co. v. U. S.* (C. C.), 94 Fed. Rep., 822.

Material of Chief Value.—In the absence of a settled designation of a cloth by merchants and importers, its designation as hair, silk, cotton, or wool for the purposes of revenue depends upon the predominance of such article in its composition and not upon the absence of any other material.

The words "not otherwise herein provided for" mean not otherwise provided for in that act.—*Arthur v. Butterfield*, 125 U. S., 70, 75.

Meaning of a Statute.—The meaning of the legislature constitutes the law. A thing may be within the letter of a statute but not within its meaning, and within its meaning though not within its letter.—*Raymond v. Thomas*, 91 U. S., 712, 715.

In ascertaining the meaning of terms in a tariff act recourse is had to their meaning according to the commercial understanding of the terms in our markets at the time the act was passed, and where it does not appear from the act itself that some other certain fixed meaning is intended by the terms used

they are to be understood according to the commercial meaning of the terms in our markets at the time the act was passed; but where it does appear by the act itself that a particular meaning was intended by the terms used that particular meaning must be adopted in giving a construction to the act, whatever the commercial meaning of the terms may have been.

It is not to be presumed that Congress, when it substituted the provisions of one tariff for those of another, intended to use terms in a sense different from that in which they were used in a prior act.—*Roosevelt v. Maxwell*, 3 Blatchf., 391; 20 Fed. Cas., 1155.

In the construction of tariff laws the ordinary meaning of the phrase in common speech is a question of law for the court; the commercial meaning is a question of fact for the jury.—*Vom Cleff v. Magone* (C. C.), 57 Fed. Rep., 198.

Though it has been said that there is no common law of the United States, it is still true that when acts of Congress use words which are familiar in the laws of England, they are supposed to be used with reference to their meaning in that law.—*U. S. v. San Jacinto Tin. Co.*, 125 U. S., 273, 280.

Merchants' Trade Names.—In the construction of laws relating to trade and commerce the vocabulary of merchants is to be adopted in preference to that of mechanics.

To authorize the admission of small pieces of bolt iron under the name of chain links, it must be proved that they have been previously known in commerce by that name.—*U. S. v. Sarchet, Gilp.*, 273; 27 Fed. Cas., 958.

The denomination of merchandise in a tariff act is to be understood in the sense in which the same terms are employed by merchants.—*U. S. v. 112 Casks of Sugar*, 8 Pet., 277.

Part of Statute Invalid.—Unless it is impossible to avoid it a general revenue statute should never be declared inoperative in all its parts because a particular part relating to a distinct subject may be invalid.—*Field v. Clark*, 143 U. S., 649, 696.

Proof Required for Proper Classification.—Whether certain pieces of iron formed in a shape and size to be used as car axles in the manufacture of railroad cars were properly classed as axles, instead of hammered iron, is a question of fact to be tried by jury, and if the jury have any doubts as to whether such iron was properly classified and charged for as axles they should give the importer the benefit of the doubt.

In such a case, as in all other civil cases, the case is to be decided by a preponderance of proof. The burden of proof to show that the articles were dutiable is on the Government; and the Government, by a fair preponderance of proof, must establish what they claim in that regard.

If the articles were in fact axles such as named in the statute, less proof would be required to show that they were understood to be so in commercial transactions; but if they were not in fact axles greater evidence would be required to show that they were understood to be axles in the commerce and trade of the country and so recognized.

The names given to the different articles in the tariff laws are to be understood and construed to mean what they were understood to mean in the commerce and trade of the country, and among those engaged in trade and commerce at the time of the passage of the acts, and as recognized by the customs department at the same time, and not at periods since the passage of the law.

The commercial character of the importation does not depend upon the mere fact that were or were not finished axles, but whether they were understood and

recognized in commerce and trade as axes by those engaged in that trade at the time of the passage of the law.

If the jury find for the plaintiff, they should render a verdict in his favor for the difference between the rates of duty charged and the proper charge, with interest from the time the duties were paid until the first day of the term at which the case is tried.—*Ross v. Fuller*, 17 Fed. Rep., 224.

Proof of Commercial Designation.—Proof of the commercial designation of an article must go to show that the name of the goods in question is identical with the specific term used in the statute.

When the terms used are general they include all the subordinate or special kinds of goods so generally described, notwithstanding that dealers and others, in speaking of a particular kind of such goods, commercially describe them usually by a specific name.

Specific names when used in tariff acts are to be construed according to their general use in trade and commerce.—*Jaffrey v. Murphy*, 19 Int. Rev. Rec., 143; 13 Fed. Cas., 285.

The commercial designation of an article is not a matter of which the courts can take judicial knowledge, but is a fact to be proved.

Where the court below makes special findings, no exception is necessary to raise the question whether the facts support the judgment.—*Seeberger v. Schlesinger*, 152 U. S., 581, 586.

Regulations.—There are undoubtedly many statutory regulations intended for the guidance of officers in the conduct of business devolved upon them which do not limit their power or render its exercise in disregard of the requisitions ineffectual. Such generally are regulations designed to secure order, system, and dispatch in proceedings, and by a disregard of which the rights of parties interested can not be injuriously affected. Provisions of this character are not usually regarded as mandatory unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated; but when the requisitions required are intended for the protection of the citizen and to prevent a sacrifice of his property, and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory, but mandatory. They must be followed or the acts done will be invalid. The power of the officer in all such cases is limited by the manner and conditions prescribed for its exercise.—*French v. Edwards*, 13 Wall., 506, 511.

Regulations prescribed by the President and by the heads of departments under authority granted by Congress may be regulations prescribed by law, so as lawfully to support acts done under them and in accordance with them, and may thus have in a proper sense the force of law; but it does not follow that a thing required by them is a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen where a statute does not distinctly make the neglect in question a criminal offense.—*U. S. v. Eaton*, 144 U. S., 677.

Where there has been long acquiescence in a department regulation and by it rights of parties for many years have been determined and adjudged, it is not to be disregarded without the most cogent and persuasive reasons.—*Robertson v. Downing*, 127 U. S., 607, 613.

A regulation affects a class of officers; an instruction is a direction to govern the conduct of the particular officer to whom it is addressed.—*Landrum v. U. S.*, 16 C. Cls. R., 74, 86.

Revenue Laws.—The term "revenue law" when used in connection with the jurisdiction of the courts of the United States means a law imposing duties on

imports or tonnage or a law providing in terms for revenue; that is to say, a law which is directly traceable to the power granted to Congress by section 8, Article I, of the Constitution, "to lay and collect taxes, duties, imposts, and excises."

Revised Statutes 844 is not a revenue law within the meaning of that clause of Revised Statutes 699, which provides for a writ of error without regard to the sum or value in dispute "upon any final judgment of a circuit court in any civil action brought by the United States for the enforcement of any revenue law."—*U. S. v. Hill*, 123 U. S., 681, 686.

Such laws as are made for the direct and avowed purpose of creating revenue or public funds for the service of the Government are revenue laws.—Justice Story in *U. S. v. Mayo*, 26 Fed. Cas., 530; 1 Gall., 396.

On the authority of *U. S. v. Hill* (123 U. S., 681) it is held that an action against sureties to recover on a bail bond conditioned for the appearance of the principal to answer to an indictment for making and forging checks against an assistant treasurer is not a case for the enforcement of a revenue law within the intent of Revised Statutes 699.—*U. S. v. Broadhead*, 127 U. S., 212.

Revenue laws are those laws only whose principal object is the raising of revenue, and not those under which revenue may incidentally arise. The act of July 4, 1864 (13 Stat., 390), is not a revenue law.—*The Nashville*, 4 Biss., 188; 17 Fed. Cas., 1176.

The act of July 18, 1866 (14 Stat., 184), is not an act relating to customs within the meaning of the act of March 2, 1867 (id., 546).—*The Monte Christo*, 6 Ben., 327; 17 Int. Rev. Rec., 31; 17 Fed. Cas., 608.

Rule of Construction.—A well-known rule of construction remains in force until abolished by Congress.—*Arthur v. Morrison*, 96 U. S., 108.

Silk Ribbons.—In construing section 8 of the act of June 30, 1864, imposing a duty on "all dress and piece silks, ribbons, and silk velvets, or velvets of which silk is the component of chief value," that clause must be construed in the same manner as if the word "ribbons" read "silk ribbons."—*Chapon v. Smyth*, 11 Blatch., 120; 5 Fed. Cas., 500.

Construction of Statute.

POSITION OF PROVISIO.—While it is undoubtedly the general rule that a proviso to a particular section of a law does not apply to other sections and is to be construed with reference to the immediately preceding parts of the clause to which it is attached, this rule is not controlling, especially in such composite structures as tariff and appropriation acts. While the position of the proviso greatly influences the extent of its application, the inference from its position can not overrule its plain intent.

COMPONENT OF CHIEF VALUE.—The determination as to the component material of chief value in an imported article is to be in reference to the value of the components in the country where the compound is produced. As to certain paraffin produced in Belgium, a finding was made on evidence of the value of one component in Belgium and of the other component in Germany. *Held*, that the finding should be disregarded, such evidence not being sufficient to overcome the sworn statement of the manufacturer or shipper of the paraffin.—*U. S. v. Downing* (C. C. A.), T. D. 27025.

Successive Tariff Acts.—In construing a tariff revenue system consisting of numerous acts, enacted at different times, each alteration is to be regarded in connection with the system, and existing legislative rules of general application are not to be disturbed beyond the clear intention of Congress.—*Saxonville Mills v. Russell*, 116 U. S., 13, 21.

It is true that statutes relating to the same subject are to be construed together; but this rule does not go to the extent of controlling the language of subsequent statutes by any supposed policy of previous ones. *Goodrich v. Russell* (42 N. Y., 177, 184). It is also true that where the words of a statute to be construed differ from the words of a former act upon the same subject it is an intimation, at least, that they are to have a different construction.—*Grace v. Collector of Customs* (C. C. A.), 79 Fed. Rep., 315.

The various decisions of the Treasury Department as to the true construction of the statutes as to dutiable articles are not conclusive on the courts; yet when such decisions have been long in force and the language of prior statutes is reproduced in *hæc verba* in later statutes such Treasury rulings lend aid in reaching a true interpretation of the later acts.—*U. S. v. Kaub*, 23 Int. Rev. Rec., 211; 26 Fed. Cas., 681.

Suits Under Revenue Laws.—Words and phrases are used in the statutes with different significations and different shades of meaning in different connections. Thus the word "revenue" has different meaning in the Constitution, in statutes relating to crimes, and in statutes relating to revenue officers.

The meaning of the words "any suit or proceeding arising under the revenue laws," in R. S. 825, must be determined as they appear and not as similar words may be employed elsewhere in other connections.

Where a district attorney prosecutes a suit arising under the revenue laws to a judgment and the judgment is satisfied by deducting the amount thereof from a judgment recovered against the United States, he is entitled to his per cent.—*Beckwith v. U. S.*, 16 C. Cls. R., 250.

Taxation.—As I understand the principle of fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, can not bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an "equitable construction," certainly such construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.—Lord Cairns in *Partington v. Attorney General*, L. R. 4 H. L., 100, 122.

Titles of Schedules.—The multitude of articles upon which duty was imposed by the act of 1883 are grouped in that act under 14 schedules, each with a different title, and all that was intended by those titles was a general suggestion as to the character of the articles within the particular schedule and not any technically accurate definition of them.—*Hollander v. Magone*, 149 U. S., 586.

Seized Goods.—Where merchandise is seized for an infraction of the law and the penalty is remitted, it must still be classified without regard to the remission proceedings.—*T. D. 15311* (G. A. 2745).

Common Meaning of a Statute.—Where the words of a statute are not technical, either as having a special sense by commercial usage or as having a scientific meaning different from their common meaning, they are the words of common speech, and as such their interpretation is within the judicial knowledge and therefore matter of law. In this case it was decided that tomatoes were vegetables and not fruit.

The legislature must be presumed to have chosen language with regard to those for whom it is designed to constitute a rule of commerce, viz, the community at large.—*Nix v. Hedden* (C. C.), 39 Fed. Rep., 109.

Meaning of Language.—The court takes judicial notice of the ordinary meaning of words in our tongue, and dictionaries are admitted not as evidence but only as aids to the memory and understanding of the court.—*Nix v. Hedden*, 149 U. S., 304.

Trade Meaning of Tariff Terms.—In order to determine the commercial meaning of a term it is not the meaning used in transactions between the retail dealer on the one side and the individual purchaser at retail on the other side that is to be considered, but the meaning used between parties who are, on both sides of the transaction, engaged in that particular occupation as the business of their lives.—*Morrison v. Miller*, 37 Fed. Rep., 82.

The trade and commerce of this country is the trade which buys and sells the particular article, whether it comes from abroad or is made here, and the trade and commerce which makes a designation is the trade and commerce between individuals where the buyer and seller are both engaged in that as their business; not where an individual retails to a consumer, but where both the parties to the transaction are tradesmen.—*Dieckerhoff v. Robertson* (C. C.), 44 Fed. Rep., 160.

The trade which by its usage settles the commercial names of goods is the trade which is carried on between those who buy and sell at wholesale, where both the buyer and the seller are engaged in the traffic in those goods as the regular business of their lives. It is not the trade where an individual buys for his own personal consumption.—*Lamb v. Robertson* (C. C.), 38 Fed. Rep., 716.

Trade Usage.—In weighing the testimony of witnesses as to trade usage, the jury should consider the extent to which any of the witnesses may have an interest which might color their evidence.

The trade usage which is to determine the meaning of a word must be well known and general.—*Dodge v. Hedden* (C. C.), 42 Fed. Rep., 446.

STATUTES—REPEAL OF.

Act of March 3, 1883, Superseded by Act of October 1, 1890.—The act of 1890 supersedes the act of 1883 and articles specifically enumerated in the act of 1883 and not so enumerated in the act of 1890 are dutiable under the latter act.—*T. D. 11551* (G. A. 726).

Construction.—Contemporaneous construction by the Treasury Department of a repealing clause in the customs laws is entitled to weight in favor of importers.—*Robertson v. Bradbury*, 132 U. S., 491.

Penalties.—The repeal of a statute does not release any penalty, forfeiture, or liability incurred unless the repealing act so provides.—*U. S. v. Keokuk & H. Bridge Co.* (D. C.), 45 Fed. Rep., 178.

Repeal of a Repealing Act.—The general rule is that a repeal of a repealing statute revives the original act. It could not be supposed that Congress would repeal the provision of the act of 1864, as to mohair, lastings, etc., if they had supposed that thereby the same provision in the act of 1862 would have been revived. It is the better opinion that by this repeal the manufactures in question became dutiable under the act of June 30, 1864, paragraph 6, section 5.

Repeals by implication of revenue and collection laws are not favored. In order to work a repeal by implication there must be a positive repugnancy between the provisions of the new and the old law.

Where the provisions of the old statute revived in the later and where the later was intended to prescribe the only rules upon the subject the subsequent is held to repeal the former statute.

Where some parts of the Revised Statutes are omitted in the new law, they are not, in general, to be regarded as left in operation if it clearly appear to have been the intention of the legislature to cover the whole subject by the revision.

Where the revising statute covers the whole subject matter of antecedent statutes, it virtually repeals the former enactment without any express provision to that effect.—*Butler v. Russell*, 3 Cliff., 251; 11 Int. Rev. Rec., 30; 4 Fed. Cas., 910.

This question is settled by Revised Statutes 12, which provides that "Whenever an act is repealed which repealed a former act, such former act shall not thereby be revived unless it shall be expressly so provided." When a statute contains an absolute affirmative repeal of an antecedent statute, or part of it, then the expiration of the subsequent statute by its own limitation will not revive the repealed act.—*U. S. v. 25 Cases of Cloths*, Crabbe, 356; 28 Fed. Cas., 257.

Repeal by Implication.—Repeal by implication upon the ground that the subsequent provision upon the same subject is repugnant to the prior law is not favored in any case, and must always meet with disfavor where the attempt is made to apply the principle in the construction of the revenue laws of the United States.—*Fabbri v. Murphy*, 95 U. S., 191, 196.

A statute can be repealed only by an express provision of a subsequent law or by necessary implication. The two acts must be repugnant to each other, so much so that they can not stand together or be consistently reconciled with each other; then the latter, being the latest expression of the will of the law-maker, must prevail. *Morlot v. Lawrence*, 1 Blatchf., 608; 17 Fed. Cas., 770.

To work a repeal of the old law by implication there must be a positive repugnancy between the new law and the old, and even then the old law is only repealed to the extent of the repugnancy.—*Fabbri v. Murphy*, 95 U. S., 191; *Arthur v. Homer*, 96 U. S., 137, 140.

Repeals by implication are never favored particularly as applied to revenue laws. A statute is never repealed by implication if the prior and subsequent statutes can be so construed as to stand together. The implication must be one of necessity, and it is not sufficient that the two acts should relate to the same subject matter. There must be a positive repugnancy between them, and even then the repeal is only pro tanto of the prior statute as can not stand together with the subsequent act. All laws for the collection of the revenue are to be construed as auxiliary and cumulative.—*U. S. v. The Cuba* (2 Hughes, 489; 10 Int. Rev. Rec., 115; 2 Am. Law T. Rep. U. S. Cts., 121; 2 Balt. Law Trans., 743), 25 Fed. Cas., 716.

Sections Repealed.—Section 7 of the act of February 8, 1875 (18 Stat., 307), has been repealed. T. D. 14726 (G. A. 2448); T. D. 15033 (G. A. 2610); T. D. 15070 (G. A. 2623); *Kent v. U. S. (C. C.)*, 68 Fed. Rep., 536; *Same v. Same (C. C. A.)*, 73 Fed. Rep., 680 followed.—T. D. 17927 (G. A. 3802).

Section 66, act of 1799, is not repealed by section 19 of the act of 1842 nor by section 8, act of 1846.—*U. S. v. 67 Packages of Dry Goods*, 17 How., 85.

R. S. 2902 is not affected by section 7, act of 1883, which repeals R. S. 2907, 2908, and section 14 of the act of June 22, 1874.—*U. S. v. Gabriel (C. C.)*, 36 Fed. Rep., 888.

Sections 2839 and 2864, Revised Statutes, were repealed by section 12 of the Moieties Act of June 22, 1874.—*U. S. v. Auffmordt*, 19 Fed. Rep., 893.

Revised Statutes 5597 saves all rights which have accrued under acts repealed by Revised Statutes 5596.—*Bechtel v. U. S.*, 101 U. S., 597.

Section 6 of the act of March 3, 1865 (13 Stat., 493), is repealed by section 1, act of March 2, 1867 (14 Stat., 559), and after the passage of this act only the duty specified in it can be assessed on imported wool.

The expression "in lieu of the present duties" or "in lieu of the duties now imposed by law" is used when the intention is to repeal the duties previously in force. No language could more clearly express the intent of Congress; and these terms have come to be considered the peculiarly apt words of revenue repeal.—*Washington Mills v. Russell*, Holmes, 245; 18 Int. Rev. Rec., 203; 29 Fed. Cas., 366.

The act of December 24, 1861 (12 Stat., 330), repeals that part of section 5 of the act of August 5, 1861, which provides that "all goods, wares, and merchandise actually on shipboard and bound to the United States at the date of the passage of this act shall be subject to duties as provided by law before and at the time of the passage of this act," so far as it applies to goods mentioned in this act.—*Gossler v. Goodrich*, 3 Cliff., 71; 10 Fed. Cas., 836.

Canadian Reciprocity Act Repealed.—The tariff act of 1913 was designed to be a complete revision of the tariff laws and was intended as a substitute for all prior tariff legislation not saved by the act itself. The rule seems to be well settled that an act of that character must be held to have repealed all prior laws not expressly continued in force and relating to the same subject. The tariff act of 1913 repealed section 2 of the Canadian reciprocity act.—*Dow Co. v. U. S.* (Ct. Cust. Appls.), T. D. 36902.

Statutes Revising Prior Acts on Same Subject Matter.—When a later act is a complete revision of the subject to which an earlier statute relates and is manifestly intended as a substitute for the former legislation the prior act must be considered as repealed.—*Kent v. U. S.* (C. C. A.), 73 Fed. Rep., 680.

When a later statute is a complete revision of the subject to which the earlier statute related and the new legislation was manifestly intended as a substitute for the former legislation, the prior act must be held to have been repealed.—*U. S. v. Ranlett & Stone*, 172 U. S., 133, 140.

When a revising statute covers the whole subject matter of antecedent statutes, the revising statute virtually repeals the antecedent enactments unless there is something in the nature of the subject matter or the revising statute to indicate a contrary intention.—*Kohlsaat v. Murphy*, 96 U. S., 153, 158.

Where there are two acts on the same subject, the rule is to give effect to both if possible. But if the two are repugnant in any of their provisions, the latter act without any repealing clause operates to the extent of the repugnancy as a repeal of the first; and even where two acts are not, in express terms, repugnant, yet if the latter act covers the whole subject of the first and embraces new provisions plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act.—*District of Columbia v. Hutton*, 143 U. S., 18, 26, 27.

Whether a statute is repealed by a later one is a judicial not a legislative question, and even a declaratory act, or an act directing how a former act shall be construed, is inoperative on the past though controlling in the future.

While repeals by implication are not favored, and while it is held that a statute is not repealed by a later one containing no repealing clause unless the later statute is positively repugnant to the former or is a plain substitute for it, supplying its provisions, it is still true that, repeal or no repeal, substitution or no substitution, is a question of legislative intention and there are acknowledged rules for ascertaining that intention.

As a general rule it is not open to controversy that where a new statute covers the whole subject matter of an old one, adds offenses, and prescribes different

penalties from those enumerated in the old law, the former is repealed by implication, as the provisions of both can not stand together.

It is necessary to the implication of a repeal that the object of the two statutes are the same, in the absence of the repealing clause. Maxwell on the Interpretation of Statutes, 153.—*U. S. v. Clafin*, 97 U. S., 546, 552.

Although a former statute is impliedly repealed by a subsequent one plainly repugnant to it or so far as the later statute making new provisions is plainly intended for a substitute for the earlier one, yet a repeal is not to be implied where the powers or directions under the later acts are such as may well subsist together with those under the earlier. Held on application of this principle that the act of July 20, 1868 (15 Stat., 156), sections 69 and 70, imposing taxes on distilled spirits and tobacco, did not repeal the proviso of section 25 of the act of March 2, 1867 (14 Stat., 483), which limits to 20 days the time for commencing proceedings to enforce forfeitures.—*Henderson's Tobacco*, 11 Wall., 652.

The fact that it was the intention of Congress in enacting the Revised Statutes to compile existing laws without altering them does not require the courts to give a particular section a construction in opposition to the positive provisions thereof in order to conform to the preexisting statute; but, if the two can not be reconciled, it is then to be presumed that Congress supposed and had reason to suppose that the prior statute had been changed and intended to adopt such change. Part of the act of June 6, 1872, having been embraced in the Revised Statutes, that act was consequently repealed on June 22, 1874, by the express provisions of R. S. 5596.—*Dodge v. Arthur*, 22 Int. Rev. Rec., 402; 7 Fed. Cas., 789.

Specific Provisions for Duties Not Repealed by the General Words of a Subsequent Statute.—The act of Congress, approved June 6, 1872 (17 Stat., 230), does not repeal the provisions in the acts of March 2, 1861 (12 id., 189), August 5, 1861 (id., 293), and July 14, 1862 (id., 555), imposing duties on janned, patent, or enameled leather or skins.

It is a general rule in the construction of revenue statutes that specific provisions for duties on a particular article are not repealed or affected by the general words of a subsequent statute although the language is sufficiently broad to cover the article first mentioned.

The expression "not herein otherwise provided for" in the act of June 6, 1872, *supra*, has reference to the provisions of that act, and not to those of some previous act.—*Movius v. Arthur*, 95 U. S., 144, 146.

Suits Under Repealed Acts.—As to causes of action falling within the terms of section 2, act of March 3, 1823 (3 Stat., 78), which arose after the passage of the act of July 18, 1866 (14 Stat., 179), and before the passage of the Revised Statutes, no suit can be maintained after the passage of the Revised Statutes.

No recovery can be had under said section in respect to any act done after the enactment of the Revised Statutes.—*U. S. v. Clafin*, 14 Blatchf., 55; 22 Int. Rev. Rec., 395; 25 Fed. Cas., 437.

Wool Tariff Provisions.—The act of May 9, 1890 (26 Stat., 105), was not a mere administrative regulation but an amendment to the existing tariff law (1883) changing the duty on worsteds (144 U. S., 1), and hence was superseded by the McKinley Act of 1890, which covered the entire field of wool and worsted manufactures.—*U. S. v. Murphy* (C. C. A.), 72 Fed. Rep., 1008.

TREATIES.

Act of Congress in Conflict with Existing Treaty.—Where an act of Congress is in conflict with a prior treaty, the act must control, since it is of equal

force with the treaty and of later date.—*North German Lloyd S. S. Co. v. Hedden* (C. C.), 43 Fed. Rep., 17.

Though a treaty is the law of the land under the Constitution of the United States, Congress may repeal it, so far as it is a municipal law, provided its subject matter is within the legislative power of Congress.

A promise in a treaty that the products of one country shall not be subject to a higher rate of duty than the like products imported into the United States from other countries addresses itself to the political and not to the judicial department of the Government, and the courts can not try the question whether it has been observed or not.

Though the treaty with Russia of December 18, 1832 (8 Stat., 444), stipulated that no higher rate of duty should be imposed on goods imported from Russia than upon like articles imported from other places, this court can not try the question whether a certain species of hemp, on which a duty of \$25 per ton has been imposed, is "like" Russian hemp within the meaning of the treaty. This is a question for Congress, not for the courts.—*Taylor v. Morton*, 2 Curt., 454; 23 Fed. Cas., 784.

A stipulation in a treaty with a foreign power that "no higher or other rate of duty shall be imposed on the importation into the United States of any article the produce or manufacture of the treaty-making power than are or shall be payable on the like articles, being the produce or manufacture of any other foreign country," does not prevent Congress from passing an act exempting from duty like products or manufactures imported from any particular foreign dominion it may see fit.—*Whitney v. Robertson*, 21 Fed. Rep., 566.

Danish Dominions—Importations from.—The provisions of the treaty with the King of Denmark, concluded April 26, 1826, and revived by the convention of April 11, 1857, do not by their own operation authorize the importation free of duty from Danish dominions of articles made duty free by the convention of January 30, 1875, with the King of the Hawaiian Islands, but otherwise subject to duty by a law of Congress, the King of Denmark not having allowed to the United States the compensation for the concession which was allowed by the King of the Hawaiian Islands.—*Bartram v. Robertson*, 122 U. S., 116.

Dominican Treaty.—Sugar imported from the Dominican Republic in 1884. Duty imposed. The importer contended that sugar was free under the treaty of February 8, 1867 (15 Stat., 478), with the Dominican Republic and the treaty with Hawaii of 1875 (19 Stat., 625). *Held*, that section 11, act of 1883, was not intended to revive and set in motion the inert features of the Dominican treaty.

The treaty with the King of the Hawaiian Islands and the act giving it effect (19 Stat., 200), by which sugar from those islands was admitted into the United States free, did not operate under the previous treaty with the Dominican Republic so as to establish a like exemption as to sugar imported from that country.—*Netherclift v. Robertson*, 27 Fed. Rep., 737.

The treaty of February 8, 1867, with the Dominican Republic (art. 9) provides that "no higher or other duty shall be imposed upon the importations into the United States of any article the growth, produce, or manufacture of the Dominican Republic, or of her fisheries, than are or shall be payable on the like articles the growth, produce, or manufacture of any other foreign country or of its fisheries." The convention of January 30, 1875, with the King of the Hawaiian Islands provides for the importation into the United States, free of duty, of various articles, the produce and manufacture of those islands (among which were sugars), in consideration of certain concessions made by the King of the Hawaiian Islands to the United States. *Held*, that this provision in the treaty with the Dominican Republic did not authorize

the admission into the United States, duty free, of similar sugars, the growth, produce, or manufacture of that Republic, as a consequence of the agreement with the King of the Hawaiian Islands, and that there was no distinction in principle between this case and *Bartram v. U. S.* (122 U. S. 116).—*Whitney v. Robertson*, 124 U. S., 190.

Section 11, act of March 3, 1883, was not intended to revive and set in motion the inert features of the Dominican treaty.

The treaty of January 30, 1875 (19 Stat., 625), making molasses from Hawaii free, did not operate upon the previous treaty with the Dominican Republic, so as to establish a like exemption as to molasses imported from the latter country.—*Kelly v. Hedden*, 31 Fed. Rep., 607.

Great Britain—Reciprocity Treaty with.—The reciprocity treaty between the United States and Great Britain and the act of August 5, 1854 (10 Stat., 587), did not operate to repeal the previous laws as it respects penalties and forfeitures that had already been incurred. Their effect was to suspend the previous statutes after a given time so far only as they affected certain enumerated articles and to admit them thereafter free of duty.—134,901 Feet of Pine Lumber, 4 Blatch., 182; 18 Fed. Cas., 707.

Persian Treaty.—The act of June 6, 1872, section 3 (17 Stat., 232), is not in conflict with the treaty with Persia (11 Stat., 709).—*Powers v. Comly*, 101 U. S., 789.

Spanish Publications.—The terms of the treaty of Paris granting right of free entry to certain Spanish publications do not cover works merely printed in Spanish, but only cover Spanish productions. The benefits of the treaty only inure to the people of the two contracting countries.

Trade pamphlets issued to advertise merchandise are not scientific, literary, nor artistic works. *Schieffelin v. U. S.* (84 Fed. Rep., 880).

Trade pamphlets for general distribution are not publications of individuals for private circulation, and are not entitled to free entry under the provisions of paragraph 501, act of July 24, 1897. *Schieffelin v. U. S.* (supra).—*T. D.* 23198 (G. A. 4974).

FRAUD, SMUGGLING, ETC.

Forfeiture—Concealing Dutiable Articles in Baggage.—Revised Statutes, sections 2799 and 2802, which require any person arriving in the United States to make entry of articles claimed as baggage or tools, and subjecting any dutiable article found in his baggage and not so entered to forfeiture, do not apply where the claimant is ignorant of the fact that such articles are on board.

Decision affirmed.

This cause comes here upon writ of error to review a final decree of the District Court, Southern District of New York, entered upon the verdict of a jury directed by the court dismissing a libel of information. The libel was filed against two baskets or hampers and their contents of merchandise, which the collector had seized upon their being landed from the *Kaiser Wilhelm der Grosse* at the port of New York. The baskets had been checked as baggage at Bremen by their owner, Blell, who came as a second-cabin passenger.—*U. S. v. Two Baskets* (C. C. A.), *T. D.* 34010.

Illegal Importation.—Where goods have been seized for illegal importation it is competent to prove that the fact of an intended illegal importation was previously known to the revenue officers and that they acted thereon in making the seizure. Such information may properly be regarded as so connected with the illegal act itself as to constitute a part of the *res gestae*.

In a proceeding to forfeit imported goods on the ground of fraud, the goods themselves are regarded as the defendant and offender, and therefore it is no objection to the admission of proof of communications made to the revenue officers that they were made in the absence of the claimant.

In a suit to forfeit goods after the passage of the act of June 22, 1874, which requires proof of an actual intent to defraud the Government, there is no error in charging the jury that, after an actual importation in violation of law has been shown, if the claimant knew that his method of importation was contrary to law the burden is upon him to show affirmatively that he did not adopt such method with intent to evade the payment of duties.—U. S. v. Nine Trunks (6 Weekly Notes, 542; 24 Int. Rev. Rec., 327; 6 Rep., 613; 26 Pittsb. Leg. J., 38), 27 Fed. Cas., 164.

Forfeiture—Seizure.

DISTRICT OF SEIZURE.—Where merchandise on land is seized for illegal importation, the proper district of seizure is that in which the property is found; it can not be carried from one district to another for the purpose of changing the situs of seizure and adjudication.

DISTRICT OF ADJUDICATION.—The proper district for an adjudication of forfeiture of smuggled merchandise is that in which it is legally seized.

SEIZURE—INTENT.—Where a collector of customs in one district visited another district and took into his possession articles suspected of having been smuggled and carried them back into his own district to determine whether they were liable to seizure, such act of taking possession did not constitute a seizure.

ILLEGAL SEIZURE—JURISDICTION OF COURT.—A collector took back into his own customs district smuggled articles found in another district and made formal seizure of them in his own district. *Held*, that the seizure was illegal; that the court in his own district was without jurisdiction of forfeiture; and that such seizure could only legally be made in the district in which the articles were found.

SEIZURE—ARTICLES FOUND IN ANOTHER CUSTOMS DISTRICT—CUSTODY.—Smuggled articles seized by a collector in another customs district should under section 3086, Revised Statutes, be placed in the custody of the collector in the other district, to abide adjudication.—U. S. v. Larkin (C. C. A.), T. D. 28328.

Seizure, Burden of Proof, etc.—An acquittal on a criminal charge under sections 2865 and 3082, Revised Statutes, is not a bar to proceedings in rem under sections 2802 and 3061, Revised Statutes. The burden of proof in proceedings under section 9 of the seal act of December 29, 1897, rests and remains upon the claimant.—Dept. Order (T. D. 22226).

When probable cause is shown for seizure of goods for entry on a false invoice the burden of proof is on the claimant to show that the invoice was not made with intent to defraud the revenue. It is not sufficient for him to rely on the invoice itself as proving its own truth.—Wood v. U. S., 16 Peters, 342.

Exportation of Forfeited Merchandise.—Seized merchandise decreed forfeited can not be released for exportation under section 2979, Revised Statutes, for benefit of foreign creditors of a bankrupt.—Dept. Order (T. D. 18710).

Forfeiture.

FRAUDULENT IMPORTATIONS—FORFEITURE—PROCEDURE—ACTION IN PERSONAM.—Under section 9, customs administrative act of June 10, 1890, providing, in case of fraudulent importation of merchandise, that the value of such merchandise, "to be recovered from the person making the entry, shall be forfeited," *Held*, that the remedy is by an action against the person and not by an action in rem against the money itself.

FORFEITURE OF VALUE OF MERCHANDISE.—Section 3082, Revised Statutes, providing, in case of importation of merchandise contrary to law, that "such merchandise shall be forfeited," does not afford authority for forfeiture of the value of the merchandise.

ACQUITTAL FROM CRIMINAL INDICTMENT—PLEA IN BAR.—On proceedings in rem for the forfeiture of imported merchandise, in which the person appearing as claimant of the merchandise had previously been tried and acquitted on an indictment for illegal importation of the same goods, and in which the issues presented by the indictment were the same as those raised in the proceedings in rem, *Held*, that the acquittal operated as a bar to the prosecution of the suit in rem.

NOLLE PROSEQUI—PLEA IN BAR.—Two persons were separately indicted for fraudulently importing merchandise into the United States, both indictments growing out of the same transaction; one was tried and acquitted, and a nolle prosequi was entered to the indictment against the other. *Held*, that neither the acquittal of one nor the nolle prosequi regarding the other operated as a bar to proceedings in rem for the forfeiture of the merchandise to which the latter was claimant.—U. S. v. A Lot of Precious Stones and Jewelry (C. C. A.), T. D. 26159.

REMISSION OF PENALTY—CONDITIONS PRECEDENT.—No application for remission of the penalty of forfeiture can be instituted under section 17, act of June 22, 1874 (18 Stat., 189), until a forfeiture has been declared; but one is not debarred from making such application by reason of failure to appear as claimant in the forfeiture proceedings, though charged with due notice of such proceedings. Decision adverse to the Government.—U. S. v. 150 $\frac{1}{2}$ Dozen Long Gloves (D. C.), T. D. 29728.

Conspiracy.

CONCEALMENT OF GOODS.—Valuable laces were imported concealed in packages of nuts, wheat, etc.; they were covered by false entries, invoices, and bills of lading, which did not mention them; they were so concealed that under ordinary procedure the customs officers might easily have failed to observe them; other importations by the same parties were similarly packed; and the various shipments were made by different parties abroad. A conviction for conspiracy to defraud the customs revenue, under section 5440, Revised Statutes, affirmed on these facts.

ARTICLES ILLEGALLY ENTERED—PROOF OF DUTIABILITY.—In establishing conspiracy to defraud the customs revenue under section 5440, Revised Statutes, it is not necessary to prove affirmatively that the imported articles were dutiable, or that they were not free of duty as of American origin. The court will take judicial notice of the law and its application to the articles. Decision in favor of the Government except as to one plaintiff in error.—*Marrash v. U. S.* (C. C. A.), T. D. 29635.

Forfeiture.—It is immaterial whether the owner or driver of a domestic team, used wholly within the United States in the transportation of smuggled merchandise, had or had not knowledge of its illegal use; it is forfeitable under the provisions of sections 3061, 3062, and 3063, Revised Statutes.—Dept. Order (T. D. 27196).

Fraudulent Entry.—Dutiable merchandise imported. The importers, by means of false and fraudulent representations to the Secretary that the goods were imported for the use of the United States, induced the Secretary to issue a permit for the entry of the merchandise free of duty. *Held*, that the United States may maintain an action for the duties,

As the right to duties accrues by the importation of merchandise with intent to unlade, and immediately upon importation the duties become a personal charge upon the importer, the United States is deprived of the duties within the meaning of section 12, act of June 22, 1874, the moment it becomes entitled to them and they are withheld, and it is immaterial whether its officers retain the goods or not.

There is nothing in section 12 that limits its application as regards fraudulent intent to enter goods free, to proceedings at the customhouse only, and it is applicable to such attempts wherever made.—U. S. v. Boyd, 24 Fed. Rep., 690.

Forfeiture—Smuggling—Acquittal—Plea in Bar.—Where the defendants in forfeiture proceedings have been previously acquitted of the criminal offense of smuggling, the judgment of acquittal may be interposed in bar of a libel of information based upon practically the same offense. Decision adverse to the Government.—U. S. v. Rosenthal (C. C. A.), T. D. 30391.

Fraudulent Importation.

FRAUDULENT IMPORTATION—"CONTRARY TO LAW."—In section 3082, Revised Statutes, relating to importations "contrary to law," the words quoted relate to legal provisions not found in such section.

"MERCHANDISE" AS INCLUDING BAGGAGE.—While the term "merchandise" is used in different senses in different parts of customs legislation, in section 3082, Revised Statutes, forbidding the fraudulent importation of "merchandise," it is not limited to general merchandise requiring invoices, bills of lading, etc., but includes baggage as well.

"IMPORT OR BRING"—COMPLETION OF "IMPORTATION."—In section 3082, Revised Statutes, the words "import or bring into the United States" are not limited to their technical significance of "import" as meaning only the mere act of importation, which is complete when the vessel arrives in port, but are used in their plain sense of bringing dutiable articles into the country; they relate to dutiable merchandise brought in as personal baggage or in or with such baggage, and the importation is complete only when the dutiable articles are landed and the time for making the baggage declaration and entry has passed.

"CONTRARY TO LAW."—The prohibition of the importation of merchandise "contrary to law," in section 3082, Revised Statutes, is not limited to goods the importation of which is regulated by certain sections of the law, but extends to goods the importation of which as baggage is regulated by section 2802.

SEPARATE PENALTIES FOR SAME ACT.—The circumstance that section 2802, Revised Statutes, relating to the illegal importation of baggage, prescribes the penalty of forfeiture, to be imposed through civil proceedings, is no reason why the same violation should not be the basis for the penalty for fraudulent importation, prescribed by section 3082 and applied through criminal proceedings.—U. S. v. Chésbrough (D. C.), T. D. 30383.

Unlawful Imports—Proceedings for Forfeiture—Limitations—Concealment of Property—Evidence—Sufficiency—"Conceal."—Decedent can not be deemed to have concealed an imported violin, brought into the United States without payment of duty in violation of the customs laws, within act June 22, 1874 (18 U. S. Stat. L., 190), which provides that the time of the concealment of property shall not be considered within the limitation fixed for bringing suit to recover a penalty or forfeiture accruing under the customs laws, where decedent exhibited the violin to many guests, including well-known violinists, at musicales.—U. S. v. One Stradivarius Kieserwetter Violin (C. C. A.), T. D. 32831; T. D. 31924 (C. C.) affirmed.

Forfeiture—Concealment of Fraudulent Importation.—A violin purchased abroad to be delivered in this country free of duty and other expenses,

which subsequently was delivered to the purchaser without the payment of duty (which fact was not discovered by the customs officers until four years after such importation), and which was habitually kept by him in his drawing-room, played on at a public concert and at Sunday afternoon entertainments at the owner's residence, at which times it was frequently examined by musicians as an object of interest; *Held*, not to have been concealed within the meaning of section 22, act of June 22, 1874 (18 Stat. L., 190), providing that in cases of actions for forfeiture of fraudulently imported merchandise any period of "concealment of the property shall not be reckoned within" the three-year interval subsequent to importation during which suit must be instituted, even though the importer knew or had reason to believe that the importation was fraudulent. On demurrer to information for forfeiture. Sustained.—U. S. v. One Stradivarius Violin (D. C.), T. D. 31924.

Limitation to Proceedings for Forfeiture of Smuggled Merchandise.

FORFEITURE—IMPORTATION WITHOUT PAYMENT OF DUTY—LIMITATION TO PROSECUTION.—In proceedings for the forfeiture of merchandise imported without payment of duty it appeared by the averments in the pleadings that the claimant of the property had owned it for more than five years without knowing or having reason to suspect that it had been imported; that he had never concealed it; that neither he nor it had since been out of the United States; and that the importation of the merchandise was not known to the customs officers until about six years after the forfeiture accrued. *Held*, that the proceedings were barred under the provisions of section 1047, Revised Statutes (U. S. Comp. Stat., 1901, p. 727), and section 22, act of June 22, 1874 (U. S. Comp. Stat., 1901, p. 727), which prescribe, respectively, (1) that proceedings for forfeiture shall be brought within five years after the forfeiture accrued, provided that the offender or the property shall, within the same period, be found within the United States, and (2) that proceedings for forfeiture accruing under the customs-revenue laws shall be commenced within three years after the forfeiture accrued, provided that the time of the absence from the United States of the person subject to such forfeiture, or of any concealment or absence of the property, shall not be reckoned within the period of limitation.

INNOCENT BUYER OF SMUGGLED MERCHANDISE.—The innocent buyer of smuggled merchandise is under no liability to enter it for the payment of duty. Such payment would not relieve a forfeiture already incurred, nor would failure to pay revive it when once barred.—U. S. v. One Dark Bay Horse (D. C.), T. D. 25275.

Where the law makes the forfeiture absolute, the title of the goods is vested in the Government at once, from the moment of the commission of the unlawful act; so that a sale of the goods by the importer, before seizure, to a bona fide purchaser, will not oust the title of the Government.—U. S. v. 1,960 Bags Coffee, 8 Cranch, 398; U. S. v. The Mars, *id.*, 417; Henderson's Spirits, 14 Wall., 44; U. S. v. 76,125 Cigars, 18 Fed. Rep., 147; U. S. v. Certain Diamonds, 30 Fed. Rep., 364.

But where the forfeiture is only in the alternative of the value of the goods, a sale to a bona fide purchaser before the Government has exercised its right of election to resort to the goods, will pass title, and prevail against a subsequent seizure by the Government.—Caldwell v. U. S., 8 How., 366; U. S. v. York St. Flax Spinning Co., 17 Blatchf., 138; U. S. v. Four Cases Castings, 10 Ben., 371; Fifty Three Boxes Havana Sugar, Fed. Case 15098.

Stolen Goods.—A forfeiture of goods for violation of the revenue laws will not be imposed unless the owner of such goods or his agent has been guilty of an infraction of such laws. The act of a mere trespasser or one who has

stolen the goods will not have that effect.—The Cargo of the Lady Essex, 39 Fed. Rep., 765; *Peisch v. Ware*, 4 Cranch., 347; *U. S. v. Bags Kainit*, 37 Fed. Rep., 326.

When goods were purchased after they had been imported and passed the customhouse without the payment of duty by others, the defendant (purchaser) is not liable for the duty, unless he connived at or is shown to be a privy to the importation.—*U. S. v. Koblitz*, 15 Fed. Rep., 900.

Fraud.

WAREHOUSED GOODS—FRAUDULENT CONCEALMENT.—Where, with intent to evade the law, merchandise in bond was withdrawn from warehouse under the false pretense that it was to be exported, it was "fraudulently" withdrawn, within the meaning of section 2987, Revised Statutes, relating to warehoused merchandise fraudulently concealed in or removed from any public or private warehouse.

FRAUDULENT CONCEALMENT AFTER REMOVAL.—Section 2987, Revised Statutes, making it a criminal offense for warehoused merchandise to be fraudulently concealed in or removed from the warehouse, does not create as a crime the concealing of merchandise after its removal from the warehouse.

FRAUDULENT CONCEALMENT—TRUCK AS A "WAREHOUSE."—A truck is not a "warehouse" within the meaning of section 2987, Revised Statutes, making it a criminal offense for merchandise to be fraudulently concealed in or removed from a bonded "warehouse."

FRAUDULENT CONCEALMENT IN ANOTHER JURISDICTION.—Where merchandise was fraudulently removed from a warehouse in one judicial district and fraudulently concealed in another district, the offense was not indictable in the latter jurisdiction under section 2987, Revised Statutes, because only concealment in a warehouse, and not such as takes place after removal, is contemplated by that section.

WITHDRAWAL FOR EXPORT—DUTIES WHEN DUE—ENTRY INTO COMMERCE OF COUNTRY.—On dutiable merchandise withdrawn from bonded warehouse for exportation duties become due upon any act by which the merchandise is diverted from the process of exportation and brought into the commerce of the country, regardless of whether this act is surreptitious or honest.

"INSPECTION OF PROPER OFFICERS"—CUSTOMS REGULATIONS AS SHOWING DEPARTMENTAL CONSTRUCTION.—Section 2979, Revised Statutes, permits merchandise in warehouse to be reexported without payment of duty "under the inspection of the proper officers." As the expression quoted is a vague one which permits the interpretation that the goods shall be under constant surveillance of such officers from the time they leave the warehouse until they reach the ship, and as that interpretation has been put upon it by the Treasury Department in the Customs Regulations, *Held*, that such interpretation is controlling on the courts, because as a construction by the executive it is entitled to much weight in a doubtful case, and under section 2989, Revised Statutes, the regulations have the force of law.

WITHDRAWAL FOR EXPORT—QUASI OFFICERS—LICENSED TRUCKMEN.—As to the provision in section 2979, permitting warehoused goods to be withdrawn for export under the inspection of "proper officers," *Held*, as the Secretary of the Treasury, by articles 834, 838, 841, and 842, Customs Regulations, 1908, provides a system of licensed truckmen to whom a limited custody of the goods is intrusted for the purpose only of transfer from warehouse to hold, that such custody should be regarded as quasi official.

CUSTOMS REGULATIONS—VIOLATION AS A PENAL OFFENSE.—As to the contention that infringement of a customs regulation can not be the basis of a criminal prosecution, *Held*, that the distinction is whether Congress in a statute makes

penal the violation of the regulations, or whether such a provision can be found only in the regulation itself.

WAREHOUSED GOODS—FRAUDULENT "CONCEALMENT"—DIVERSION FROM INSPECTION OF OFFICERS ON WITHDRAWAL FOR EXPORT.—Where merchandise has been withdrawn from warehouse for exportation, subject to the "inspection of the proper officers," as provided in section 2979, Revised Statutes—such officers being truckmen licensed under customs regulations—if the owners of the merchandise or their truckmen disregard the limitations put upon them, thus introducing the goods into unrestricted commerce, they have deprived the United States of duties within the meaning of section 9, customs administrative act of 1890.

TEMPORARY FRAUDULENT CONCEALMENT.—Where merchandise has been withdrawn from bonded warehouse for free export within one year, as permitted by section 2989, Revised Statutes, "under the inspection of proper officers," by persons who conspire to interrupt such inspection, so that the merchandise is introduced into the commerce of the country without the payment of duty, this constitutes an attempt to deprive the United States of duties within the meaning of section 9, customs administrative act of 1890. It is immaterial that the conspirators may repent and set the goods again in train of exportation before the year for export has expired.—U. S. v. Ehr Gott (C. C.), T. D. 31170.

Forfeiture.

FORFEITURE—FAILURE TO MENTION BAGGAGE—INTENT.—Fraudulent intent is not necessary for the forfeiture of baggage under section 2802, Revised Statutes, for failure to mention it to the collector in the baggage declaration.

BAGGAGE—TRUNKS NOT SHIPPED BY BILL OF LADING.—Trunks belonging to a steamship passenger arriving in the United States had not been consigned to the ship's master by bill of lading, but were delivered to the ship upon baggage checks which were thereafter delivered to the passenger, and had been stored in the hold with other baggage. *Held*, that the trunks were "baggage" that should be mentioned to the collector in the baggage declaration within the meaning of section 2802, Revised Statutes.

FORFEITURE—BAGGAGE NOT MENTIONED.—A steamship passenger had in his possession an envelope containing baggage checks for two trunks which he did not mention to the collector at the time of making his baggage declaration. *Held*, that they were forfeitable because not so mentioned under section 2802, Revised Statutes, regardless of the fact that the passenger may not have opened the envelope during the voyage.

The trunks in question contained 13 gross of buttons; and, on seizure, Manheimer & Kasse appeared as claimants. These proceedings are based on section 2802, Revised Statutes, reading as follows:

"SEC. 2802. Whenever any article subject to duty is found in the baggage of any person arriving within the United States, which was not, at the time of making entry for such baggage, mentioned to the collector before whom such entry was made, by the person making entry, such article shall be forfeited, and the person in whose baggage it is found shall be liable to a penalty of treble the value of such article."—U. S. v. Two Trunks (D. C.), T. D. 31169.

Smuggling.

SMUGGLING—"CONTRARY TO LAW."—In section 3082, Revised Statutes, which prohibits the importation of merchandise "contrary to law," the words quoted relate to legal provisions not found in that section.

EVASION OF OPPORTUNITY TO PAY DUTY.—Where a person entering the United States knowingly passes the customs officers, with the intent to evade entering

goods or paying the duty at all, he must be concluded to have purposely declined the opportunity furnished him to comply with the law, and have completed the offense of smuggling denounced by section 2865, Revised Statutes. It is not necessary that he should also be permitted to escape entirely from the customs inclosure before the offense is completed.

EVASION OF CUSTOMS OFFICERS.—A conviction of smuggling was upheld under section 2865, Revised Statutes, where a person entering the United States from a ferryboat passed the customs office, with full knowledge of its location and of the fact that he had dutiable goods concealed on his person, and ignored three calls by a customs officer before he halted, and on disclosure of the dutiable goods stated that he had intended to take them to the main customhouse, a mile away, and pay the duty there.—*Rogers v. U. S.* (C. C. A.), T. D. 31167.

Rewards to Informers.

REWARDS TO INFORMERS.—FRAUD.—POWER OF SECRETARY OF TREASURY.—INFORMANT'S INTEREST.—Under section 4, act of June 22, 1874 (18 Stat., 186), authorizing the payment of such compensation as "shall be just and reasonable, under the direction of the Secretary of the Treasury," to persons furnishing information of fraud on the revenue, the Secretary is the sole judge as to whether there is an informer who is entitled to such reward. Until the Secretary acts the informer merely has the expectancy of a reward.

ASSIGNABILITY OF CLAIM.—ALLOWANCE CONDITION PRECEDENT.—An informer as to customs frauds transferred to another his claim for reward under section 4, act of June 22, 1874 (18 Stat., 186), before it had been allowed by the Secretary of the Treasury. *Held*, that such assignment was void, under section 3477, Revised Statutes, prescribing that "all transfers and assignments made of any claim upon the United States shall be absolutely null and void, unless made after the allowance of such a claim."

PAYMENT TO TRUSTEE IN BANKRUPTCY.—A collector of customs paid to the trustee of the property of a bankrupt informer the reward allowed the latter for information as to customs frauds, though the allowance of such reward was not made till after the adjudication of bankruptcy. *Held*, that such payment to the trustee was illegal, as under section 70, bankruptcy act of July 1, 1898 (30 Stat., 565), the trustee is vested only with the title of the bankrupt "as of the date he was adjudged a bankrupt" to property which prior to such date "he could have transferred or which might have been levied upon and sold under judicial process." This does not include an expectancy of reward.—*In re Ghazal* (C. C. A.), T. D. 30426.

Forfeiture, Smuggling.—A package of diamonds delivered in Europe to the captain of a vessel with a statement that the package contained nothing of value and with the request that on arrival at Philadelphia he send the package by express to a certain address in Cincinnati. On arrival of the vessel a Treasury agent boarded her and demanded the package, which was delivered to him. The owner indicted under R. S. 2865 for smuggling. *Held*, that mere acts of concealment of merchandise on entering the waters of the United States, however preparatory they may be and however cogently they may indicate an intention of thereafter smuggling or clandestinely introducing, at best are but steps or attempts not alone in themselves constituting smuggling or clandestine introduction.

The offense of smuggling is not committed by an act done before the obligation to pay or account for the duties arises.

The term "smuggling" had a well-understood import at common law, and in the absence of a particular definition of its significance in the statute creat-

ing it resort may be had to the common law for the purpose of arriving at the meaning of the word.

A review of the principal statutes enacted in this country regulating the collection of customs duties establishes that so far as they embrace legislation designed to prevent the evasion of duties they proceeded upon the theory of the English law on the same subject, that is, that they forbade all the acts which were deemed by the lawmaker means to the end of smuggling or clandestinely introducing dutiable goods into the country in violation of law, and which were likewise considered as efficient to enable the offender to reap the expected benefits of his wrongful acts. Therefore they forbade and prescribed penalties for everything which could precede smuggling or follow it, without specifically making a distinct and separate offense designated smuggling or clandestine introduction.

An indictment under R. S. 3082 which charges that the defendant on a date named "did knowingly, willfully, and unlawfully import and bring into the United States, and did assist in importing and bringing into the United States, to wit, into the port of Philadelphia," diamonds of a stated value "contrary to law and the provisions of the act of Congress in such cases made and provided with intent to defraud the United States," is clearly insufficient, as the allegations are too general and do not sufficiently inform the defendant of the nature of the accusation against him.

An indictment based on R. S. 2865 which charges that the defendant "did knowingly, willfully, and unlawfully, and with intent to defraud the revenue of the United States smuggle and clandestinely introduce into the United States, to wit, into the port of Philadelphia," certain "diamonds" of a stated value, which should have been invoiced and duty thereon paid or accounted for, but which to the knowledge of the defendant and with intent to defraud the revenue were not invoiced nor the duty paid or accounted for, sufficiently describes the offense to make it clear to the common understanding what articles were charged to have been smuggled and is sufficient.

Examining the case made by the record, it results that, whether we consider the testimony of the captain alone or all the testimony, it unquestionably establishes that there was no passage of the package of diamonds through the lines of the customs authorities, but that the package was delivered to the customs officer on board the vessel itself at a time when or before the obligation to make entry and pay the duties arose and that the offense of smuggling was not committed within the meaning of the statute. Reversing the district court.—Keck v. U. S., 172 U. S., 434, 437, 438, 445, 446, 450, 455.

Forfeiture—Waiver—Estoppel—Entry After Forfeiture Accrues.—After a cause of forfeiture had accrued under section 2802, Revised Statutes, for failure of a person from abroad to mention dutiable articles of baggage, but before seizure had been made, the owner of the articles was permitted to make regular entry and pay proper duties. *Held*, that such permission did not amount to a waiver of the Government's right of forfeiture nor estop the assertion of such right.—U. S. v. One Purple Cloth Costume, etc. (D. C.), T. D. 28777.

Forfeiture.

ILLEGAL IMPORTATION—FORFEITURE—FRAUD—ABSENCE OF INTENT—FAILURE TO DEFAUD.—In an action under section 3082, Revised Statutes, for the forfeiture of merchandise imported contrary to law, it is no defense that there was no intent to defraud the United States or that the United States was not actually defrauded of any sum.

MERCHANDISE EXEMPT FROM DUTY—INTENTIONAL EVASION OF LAW.—Where, in importing merchandise, the importer, for the purpose of serving his own pecuniary interests, intentionally omits to enter it at a customhouse and fails otherwise to comply with the laws of the United States and the regulations of the Secretary of the Treasury, authorized by law, such merchandise, even though entitled to admission free of duty if properly imported, becomes liable to forfeiture, as provided in section 3082, Revised Statutes, relating to persons who “knowingly import or bring into the United States merchandise contrary to law.”

FREE GOODS—NECESSITY OF COMPLYING WITH LAW.—The requirements of law regarding the importation of merchandise apply to goods entitled to come in free of duty as much as to those that are dutiable.

TREASURY REGULATIONS—CONTINUATION TO NEW TARIFF ACT.—The rules and regulations of the Secretary of the Treasury promulgated under the authority of one tariff act may properly be continued by him under a subsequent act by adopting and continuing to act under and to enforce them.

SAME—FAILURE TO PROMULGATE—ILLEGAL IMPORTATION.—Where the law authorizes the admission free of duty of certain classes of merchandise, the proof of identity of which is to be made “under general regulations to be prescribed by the Secretary of the Treasury,” the failure of the Secretary to make such regulations would not justify the importer in omitting to comply with the customs laws of the United States, and if he does so he imports “contrary to law” within the meaning of section 3082, Revised Statutes.

OFFENSES AT COMMON LAW—ILLEGAL IMPORTATION.—The importation of merchandise into the United States without entering it at a customhouse and otherwise in contravention of the laws of the United States would not constitute an offense at common law.—*U. S. v. 50 Waltham Watch Movements (D. C.)*, T. D. 26546.

Forfeiture of Team Used in Smuggling.

FORFEITURES—INTENT OF OWNER.—Sections 3061–3063, Revised Statutes, relating, among other things, to the forfeiture in revenue cases of property used in smuggling, must be construed fairly and reasonably to arrive at the intent of Congress, and without regard to the intent of the owner of the property or to his ignorance of its use in a manner offensive to the statute.

SEIZURE OF VEHICLES OF INNOCENT OWNER.—Section 3062, Revised Statutes, provides that every vehicle on which is found merchandise brought into the United States contrary to law shall be subject to seizure and forfeiture. In construing this provision, together with that in section 3063 (*id.*), that vehicles owned by common carriers, unless used with the consent or privity of the common carriers, shall not be subject to such seizure, held that it is not necessary that the unlawful use of such vehicle should be consented to or known by the owner.

A smuggler hired a team at a livery stable and, leaving it near the Canadian boundary, effected the unlawful importation of certain merchandise. On the return journey the team was seized. The seizure was held legal under sections 3061–3063, Revised Statutes, though the owner of the team had no knowledge of the illegal use to be made of it, and though it had been used wholly within the United States.—*U. S. v. One Black Horse (D. C.)*, T. D. 25396.

Ownership of Smuggled Goods.—The right of the United States to forfeit goods seized from the purchaser of the goods while he was attempting to smuggle them into the United States is not subject in any way to the right of the seller of the goods, as against the purchaser, to rescind the sale on account of the fraud of the purchaser and to recover them. To permit secret claims of ownership to be asserted after forfeiture would be in plain violation of the statute.—*581 Diamonds v. U. S.*, 119 Fed. Rep., 556.

INDEX.

A.		Page.		Page.
Abacus or figuring machine.....		334	Acids, Benzoic	888
Abalone meat		1114	Boric	15
Abandonment:			Bromofluorescein.....	41
Delivery of merchandise by importer.....	1466, 1468		Carbolic, crude	49, 888
Importer's liability for duty.....	1467, 1470		Chromic.....	888
Jurisdiction of Board of General Appraisers.....	1475		Cinnamic.....	18, 20
Notice of, must be in writing.....	1473, 1475		Citric.....	15
Ten per cent of invoice quantity or value.....	1463, 1467		Containers for.....	911
To underwriters.....	1229		Cresotine.....	48
Warehoused goods after three years.....	1653, 1656		Cryslic.....	15
Worthless goods.....	1364		Dichlorophthalic.....	48
Abatement of duties prohibited.....	1616		Formic.....	15
Abbe condensers.....	167		Fluoric.....	888
Abdominal supporters:			Gallic.....	15
Cotton.....	496		Glycerophosphoric.....	39
India rubber.....	823		Hydrochloric.....	888
Abney levels.....	1089		Hydrofluoric.....	888
Abolition of duties under Porto Rican act of April 12, 1900.....	1713		Lactic.....	15
Abortion, articles for causing.....	1543		Linoleic.....	16
Abrasives, artificial, crude.....	208, 985		Metanilic.....	49
Absinthe.....	443, 1520		Muriatic.....	888
Absorbent—			Naphthol sulpho.....	51
Cotton, medicated.....	23		Naphthaline sulphonie.....	48, 50
Paper.....	682		Naphthylamine disulphonie.....	50
Absorption of—			Nitric.....	888
Sea water.....	341		Nitropicric.....	888
Other than sea water.....	1671		Oleic.....	76
Abusson carpets.....	585		Oxalic.....	15
Acacia catechu cutch.....	58		Palmitic.....	15
Accordions, Blow.....	712, 836		Phosphoric.....	888
Acetanilid.....	39, 40		Phthalic.....	888
Acetate of—			Pieric.....	888
Copper.....	935		Prussic.....	888
Lead.....	91		Pyrogallie.....	15
Acetic anhydrid.....	17		Ricinoleic.....	70
Acetic ether.....	57, 58		Rosolic.....	43
Acetic or pyroligneous acid.....	888		Salicylic.....	15
Acetone.....	17		Silicic.....	888
Acetosalicylid acid.....	34		Sludge.....	1010
Acetylsaliclic acid.....	39		Stearic.....	16
Acetyosal, aspirin.....	40		Sulphanilic.....	48
Acids, statutory provisions for.....	14, 888		Sulphoricinoleic.....	70
Acetic.....	888		Sulphotoluic.....	16
Acetous.....	889		Sulphuric.....	888
Acetosalicylid.....	34		Tannic.....	15, 16
Acetylsaliclic.....	39		Tartaric.....	15
Acetyosal, aspirin.....	40		Tetrachlor-phthalic.....	16
Amidosaliclic.....	49		Valerianic.....	888
Anhydrous acetic.....	17		Aconite.....	890
Anthranilic.....	15		Acorns:	
Arsenic or arsenious.....	888		Prepared.....	433
			Raw, dried, or undried, but unground.....	890
			Acquired abroad defined.....	1152
			Acquittal on criminal charge, plea in bar.....	1264, 1740

	Page.		Page.
Act of Congress in conflict with existing treaties.....	1736	Additions to make market value—Continued.	
Actions, against customs officers.....	1490	Duress, additions under.....	1288, 1289
For damages.....	1633	Excessive amount.....	1279
For unpaid duties.....	1236	Failure to make not clerical error.....	1289
Against consignees.....	1276, 1384	Importer's right to make.....	1253, 1292
Finality of assessment in.....	1377, 1378, 1380, 1402	Must be definite.....	1281
Jurisdiction of district courts.....	1384	Notice of.....	1280
Prior to June 10, 1890.....	1695	On goods not examined.....	1302
Suspension of trial of.....	1377, 1378	On invoice not on entry, clerical error.....	1287, 1291
In personam for value.....	1264	Percentages by appraisers.....	1305
To recover excess of duties paid.....	1701-1711	Resulting in lower duty.....	1279
Adamantine clinkers.....	108	Statutory provision for.....	1265
Adamonite, crude mineral.....	1051	To meet advance on previous entries, paragraph 1.....	1269
Additional duty for undervaluation.....	1265	Adeps lanae-lanolin.....	68
Absence of wrongful intent does not relieve from.....	1278	Adhesive:	
Accrues when appraised value exceeds entered value.....	1292	Felt for sheathing vessels.....	635
Advance fraction of per cent.....	1290	Paper with metal appliance.....	677, 679
Computation of.....	1275, 1284	Adjusters, card-clothing.....	301
Consigned goods.....	1298	Admissions under oath.....	1435
Corrected invoice presented before appraisal.....	1294	Adrianople skin wool.....	1182
Currency, depreciated.....	1294	Advances on:	
Currency, difference in value.....	1289	Appraisement, notice of.....	1280, 1350
Deduction of nondutiable charges.....	1267	Goods not examined.....	1302
Excess quantity of merchandise.....	1274, 1276, 1281, 1295	Advertising:	
Forfeited merchandise.....	1284, 1287, 1291, 1296	Booklets.....	942
Free goods not subject to.....	1285	Calendars.....	660
Invoice made on advice of consul.....	1290	Cards with pictures die cut.....	677
Invoice to be treated as an entirety.....	1293	Catalogues.....	942
Jurisdiction of court to determine.....	1278	Matter.....	941, 1060
Liability of consignee for.....	1285	Signs—	
Moiety of not distributed.....	1296	Cardboard.....	679
No remission of under section 2984, R. S.....	1612	Celluloid.....	53
Not fines and penalties.....	1297	View cards.....	671
Not to be remitted or refunded; limited to 75 per cent.....	1265	Aeroplanes for exhibition purposes.....	1554
On boxes containing lemons.....	1283	Affidavit:	
On goods entered on proforma invoice.....	1283, 1290	Of "owner".....	1207
On goods exported.....	1296	On entry.....	1082
On goods sold at average price.....	1606	Ex parte.....	1322, 1326
On purchased goods.....	1289	African bass:	
On sugar according to test.....	343	Dyed.....	1056
On wire rope.....	1286, 1288	Fiber.....	558, 559
Paid to secure delivery of examined packages.....	1634	Agate:	
Parcel post importations.....	1283	Articles of.....	179, 180, 884
Product of one country shipped from another.....	1297	Balls.....	712
Rate changed from specific to ad valorem.....	1268	Beads.....	879
Reduction of currency.....	1274	Bearings.....	179
Refund of for manifest clerical error.....	1286	Burnishers, bookbinders'.....	133
Specific rate of duty.....	1280, 1287, 1288, 1291	Buttons.....	702, 703, 707
Under paragraph V for refusal to permit inspection of books.....	1462	Button blanks.....	704, 879
Additional testimony.....	1332	Cabinet specimens.....	890
Additions to make market value:		Collar buttons.....	704
After entry.....	1290	Cut.....	770
Commissions by appraiser.....	1269	Glazing stones.....	178
Consigned goods.....	1283, 1287, 1288	Manufactures of, n. s. p. f.....	177, 178
		Marbles, toys.....	722
		Rings.....	256
		Agates, unmanufactured.....	890
		Agathin.....	47
		Agar-agar.....	61, 62
		Agaric.....	370
		Agricultural—	
		Drills.....	890
		Implements, definition.....	890, 892
		Products and provisions.....	357

Aigrets:	Page.	Alcoholic—Continued.	Page.
Artificial.....	732	Perfumery—Continued.	
Artificial flowers.....	735	Eau Broux.....	83
Grains and grasses, dyed and prepared.....	734	Rimels toilet water.....	84
Grass.....	732, 733	Vinalgrede toilette.....	84
Importation prohibited.....	729	Toilet preparations.....	81, 82, 83
Pig bristles.....	734	Alcoholometer.....	1091
Air dry weight.....	1181	Ale and porter standard gallon.....	459
Air rifles.....	247	Ale:	
Airships for exhibition purposes.....	1554	Beacon.....	464
Air-tight coverings, containers of solids.....	1429	Ginger.....	463
Ajinomoto, nonenumerated vegetable substance.....	370	Hopbitter.....	465
Akaumezuke, pickles.....	375	In bottles or jugs.....	458
Alabaster—		Alewives, fish.....	398
Busts.....	180	Algin, a gum produced from seaweed.....	1138
Globes.....	840	Algor gum.....	1138
Lamp.....	840	Alimentary mixture, Ducro's.....	35
Manufactures of, n. s. p. f.....	178	Allizarin:	
Manufactured.....	177, 178	Assistant.....	70
Ornaments.....	178	Castor oil in.....	73, 74
Statuary.....	178, 850	Colors (Lakes).....	895
Statuettes.....	180	Dyes or colors.....	42, 43
Albata, unmanufactured.....	266	Natural or synthetic.....	894
Albespeyres plasters.....	87	Alkalies.....	17
Albulactin as milk albumen.....	893	Containing soda.....	102-103
Albumen.....	17, 893	Alkaloids.....	17
Blood.....	894	Alligator pear seed.....	390
Egg.....	17	Alligator pears.....	997
Liquid.....	62, 894	Allowance for—	
Soson.....	894	Breakage or leakage.....	448, 449, 451, 456, 457
Albums:		Breakage of bottles containing wines and liquors.....	454
Autograph.....	675	Damage by breakage.....	1477
Photograph.....	675	Damage of beer.....	459
Postage-stamp.....	675	Damaged fruit.....	1476
Post-card.....	675	Decrease in weight.....	1670, 1673
Scrap.....	675	Dirt in nuts.....	422
Souvenir lithographic.....	661	Evaporation of brandy.....	441
Alcohol:		Impurities.....	1668
Absolute.....	1088	Leakage entire contents of cask.....	453-454
Amylic.....	60	Loss in warehouse.....	1589
Carcasses of animals in.....	34	Missing articles.....	457
Excess of, in fruits.....	411	Moisture under section 50, act of 1890.....	1594
For denaturization only.....	1573	Nonimportation.....	1635
French local taxes on.....	1434	Partial leakage wines and spirits.....	454
In wines, quantity of.....	451	Rotten fruit.....	418
Methyl or wood.....	894	Unusual absorption of sea water.....	1193, 1670, 1671
Mineral objects in.....	33	Wantage on liquors in casks or barrels.....	452, 459
Percentage of, in fruit juices.....	453	Alloys:	
Soap containing.....	101	Aluminum.....	263
Used in the arts.....	1717	Iron, tin, and manganese.....	281
Vegetable substance in.....	33	Iron and cerium.....	280
Alcoholic—		Manganese and iron.....	186
Beverages.....	444	Used as substitutes for steel.....	202, 203, 204
Compounds.....	33	Used in manufacturing of steel, n. s. p. f.....	185
Articles chief value of spirits.....	35	Almond:	
Artificial musk.....	34	Meal.....	83, 869
Citron extracts.....	36	Oil.....	70, 74
Herbs in alcohol.....	35	Almonds, shelled or unshelled.....	420
Maitraukessenz.....	35	Alms Basins regalia.....	1122
Paste containing alcohol.....	34	Almeria grapes, gauge of.....	417
Pomerinza spirits.....	36	Alpaca:	
Sinalco Seele.....	34	Haircloth.....	596
Spirits sensitizer.....	36	Hair of.....	592
Perfumery.....	81, 82	Noils.....	1193
Broux mixture.....	83	Alpha-naphthylamin hydrochloride.....	45

Altar:	Page.	Amendment of—	Page.
Cards.....	1124	Entry.....	1282
Cloth.....	1123	Protest.....	1373, 1386, 1388
Desk or pulpit desk.....	1123	Writ after expiration of time limit.....	1487
For church.....	1127, 1204	Amer picon.....	444, 1516
Lamp.....	1123	American—	
Altars:		Artist, works of.....	1199, 1205
Not regalia.....	1122, 1123	Citizenship of.....	1202
Stone, for convent.....	1205	Requirements for free entry.....	1206
Work of art.....	1204	Temporary residence.....	1201
Alteration:		Dredge repaired abroad.....	922, 923, 1640
Articles imported under bond for....	1554, 1555	Cases, value not to be included, when....	482
Precious stones taken abroad and made		Fisheries, defined.....	1066, 1072
into articles.....	1154	Pearls, products of.....	1071
Sealskin coat made over abroad.....	1158	Sponges free as products of.....	104
Alternative claims in protest..	1376, 1400, 1401, 1403	Goods exported and returned.....	907-924
Alum, alum cake, crystals, patent alum....	24	Advanced in value.....	917
Alum roller.....	83	Animals, entered after June 11, 1911..	911
Alumina:		Animals slaughtered abroad.....	917
Drops as precious stones.....	770	Automobile repaired abroad.....	912
Hydrate of.....	24, 25	Bags mixed with foreign.....	917
Manufactured compounds of.....	24	Barley returned as malt.....	915
Sulphate of.....	24	Bottles with foreign labels.....	915
Aluminous cake.....	24	Car wheels in part of foreign material.	913
Aluminum.....	263	Certificate of exportation, waiver	
Alloys.....	263	of.....	913-915
Bars.....	263	Circus animals.....	913, 914
Bronze powder.....	268	Cloth boards as shooks.....	915
Disks.....	263	Compliance with regulations neces-	
Foil.....	305	sary.....	911, 914, 915, 916, 918, 919, 921
Foundry ashes.....	280	Drawback on duty equal to.....	916, 920
Graters.....	250	Drums for acids and chemicals.....	910, 911
Hollowware.....	250, 251	Entireties.....	912
Hospital utensils.....	250	Exported under a different tariff....	7
In coils.....	264	Jute bagging.....	915
In leaf.....	267	Moving-picture films.....	913
Key chains.....	756	Pork pickled abroad.....	917
Kitchen utensils.....	250	Proof of identity.....	916, 917, 919, 922
Ladles.....	250	Repair of, abroad.....	911, 915
Plates.....	263	Shooks.....	914
Rods.....	263, 264	Teams.....	913
Scrap.....	263, 264	Tin disks.....	911
Sheets.....	263, 264, 305	Whisky bottled abroad.....	1582
Spoons.....	250	Whisky in bonded warehouse.....	1582
Squares.....	263	Watches in part foreign.....	921, 922
Strips.....	263	Amethyst, imitation of.....	768
Table utensils.....	250	Amidosalicylic acid.....	49
Waste.....	264	Amperemeters.....	1090
Amalgam grains and pellets.....	723	Ammeters.....	1090
Amasake, as vegetables prepared.....	370	Ammeter and voltmeters.....	1085
Amaryllis bulbs.....	382	Ampoules:	
Amber.....	62, 1011	Drugs in.....	37
Beads.....	683, 685	Of quinine.....	39
Chips.....	1011	Ampulla.....	146
Manufactures of.....	820	Ammonia.....	895
Necklaces.....	684, 688	Aqua or water of.....	1217
Necklace clasps.....	820	Carbonate of.....	25
Oil.....	74	Liquid anhydrous.....	25
Raw.....	64	Phosphate of.....	25
Screw swivels.....	821	Muriate of.....	25
Ambergris.....	84, 85	Sulphate of.....	896
Oil.....	74	Ammoniacal gas liquor.....	25
Amberoid.....	62, 63	Amyl—	
Ambiguities, interpretation of.....	1717	Acetate.....	57, 58
Ame, confectionery.....	346	Valerianate.....	76
Ambulance for hospital.....	1086	Amylic alcohol.....	60
Amended decision.....	1322	Analytical scales.....	1087

	Page.		Page.
Anatomical—		Anthoxanthum odorata seed	1110
Charts.....	660	Anthracin	894
Models composed of plaster of Paris.....	830	Oil.....	989
Specimens in alcohol.....	1115	Anthracite coal	966
Model for college.....	1085	Anthragallol, a coal-tar color	895
Anchor bitters.....	444	Anthrax or blackleg vaccine	905
Anchors, iron or steel.....	193	Anthross oil	74
Anchovies.....	396, 398	"Anticor" handles.....	238
Essence of.....	378	Anticorrosive composition	44
In bottles.....	138	Antifriction balls	193
In cylindrical tin boxes.....	403	Antimassar cloth	527
Paste.....	378	Antimonsaure	266
Pickled, salted.....	990	Antimony	265
Salted or smoked, in tins.....	398	Compounds of.....	265
Anchovy relish as anchovies.....	401	Ore.....	896
Andirons, cast-iron.....	226, 227	Oxide of.....	265, 266
Anemometers.....	1090	Regulus or metal.....	265
Aneroid barometers.....	1089	Salts.....	265
Angelica in brine.....	372, 1056	Sulphide.....	265, 266
Angles, iron or steel.....	188	Sulphuret.....	266
Angora—		Ware, plated.....	305
Gloves.....	742	Antipasto, as fish in tins	398, 402
Goat hair.....	592	Antipyrine	39, 40
Coat linings.....	597	Antique articles	846,
Cloth.....	596	1036, 1206-1209, 1214-1216, 1587	
Rugs.....	598	Antiselenite	870
Goat skins.....	593, 594, 1512	Antiseptic preservation as boric acid	879
Rabbit hair yarn.....	594, 595	Antitoxins	905, 906, 1087
Yarns.....	747	Ants' eggs in the pupa stage	986
Angostura Bitters.....	445	Anvils, iron or steel	221
Aniline:		Apatite	906
Dimethyl.....	50	Apparatus:	
Flurate of.....	50	Electrochemistry, glass.....	143
Animal—		Philosophical and scientific.....	1084, 1086
Black.....	962	Appeal:	
Carbon.....	936	For reappraisement.....	1332
Charcoal.....	963	Abandoned by importer, collectors	
Oils.....	67	right.....	1335
Animals, n. s. p. f.	358	Absence of importer at hearing.....	1351
American, returned.....	911	After liquidation.....	1347
Circus, exported and returned.....	913	By collector, reasonable time.....	1341
Circus, as tools of trade.....	1099	Delivery of merchandise pending.....	1352
Domestic, returned.....	898	Failure to take, makes appraised	
Disinfection of.....	1547	value conclusive.....	1350, 1351
For breeding purposes.....	897-902	Faulty invoice does not deprive im-	
Does not include poultry.....	429	porter of right.....	1336
For exhibition, may include poultry.....	904	Fee on each entry.....	1333, 1337
Heads of game.....	1017	Importer's right of.....	1336
Imported for sale.....	899, 901	Liquidation pending, void.....	1348
Imported for work.....	357	Not signed.....	1335
In alcohol.....	34	Notice of.....	1336
Live.....	357	Right of, not extended by reliqua-	
Living, meaning of.....	358	tion.....	1351
Mounted.....	731	Transmitted by mail.....	1338
Pastured abroad.....	918	Validity of.....	1358, 1359, 1360
Personal effects, theatrical.....	1099	Verbal request for, insufficient.....	1349
Pure-bred.....	900	From decisions of the Board of General	
Shipment of I. T.....	1689	Appraisers.....	1385, 1496, 1503
Straying across the border.....	908	Additional evidence on.....	1372, 1502
Trained theatrical properties.....	1098	After mandate issued.....	1501
Anise or anise-seed oil.....	74	Assignment of errors.....	1329,
Anise seed.....	389	1344, 1385, 1502	
Anklets, cotton knitted.....	510	Evidence, introduction of, on.....	1325,
Annatto butter color.....	904	1342, 1344	
Anode plates, nickel.....	282	From Circuit Court	1502, 1503, 1513
Anodynes, proprietary.....	34	To United States Supreme Court from the	
Antependia not regalia.....	1123	Court of Customs Appeals.....	1499

Articles—Continued.	Page.	Assessment of duty on—Continued	Page.
Manufactured by convict labor.....	1547	Invoice as a whole.....	1293
Not enumerated.....	866-876	Less than entered value.....	1269, 1270
Of mineral substances.....	133	Assignments of error.....	1502
Smokers'.....	860	Astronomers' instruments.....	1099
Artificial—		Atlas, wording in foreign language.....	671
Aigrets.....	732	Atrophine sulphate.....	22
Abrasives, crude.....	208	Attachment proceedings, foreign.....	12
Alizarin.....	895	Attachments, embroidery, on sewing machines.....	959
Baits.....	256	Attar of roses oil.....	74
Cork or cork substitute, suberit.....	709	Aubepine.....	45
Eyes.....	146, 150, 171, 712	Aucuba japonica (species of the laurel).....	1108
Feathers.....	729, 730	Aurolene.....	43
Flies.....	256, 257	Australian salt bush, seed of.....	393
Flowers.....	127, 729, 733, 737, 738, 740, 826, 1127	Austrian florin.....	1625, 1629
Fruits.....	730, 732, 735	Authority of—	
Leaves.....	717, 736, 738, 739	Circuit Court to appoint commissions... ..	1504
Horsehair.....	629, 630	President to make war tariff.....	1715
Pearls, synthetic.....	766	Secretary of the Treasury.....	1612, 1619, 1620
Quill feathers.....	732	Automatic lighters.....	755, 857
Shamrocks.....	712, 717	Automobile—	
Silk—		Frames, steel shapes for.....	205
Articles.....	630, 631	Goggles.....	162, 163
Hair rolls.....	631	Horns.....	221
Hats.....	631	Laces.....	773
Net.....	785	Parts.....	224
Plush.....	629	Rugs as blankets.....	574
Ribbon.....	629	Tires.....	912
Thread.....	629	Tires imported with car.....	222
Waste.....	469, 863	Tire tread vulcanized india rubber.....	825
Yarns.....	629, 630, 631	Veils.....	778
Sulphate of lime.....	87	Wind shields.....	169
Teeth.....	131	Automobiles:	
Artists'—		Admitted under bond for touring or racing.....	1554
Canvas.....	553	American, repaired abroad.....	912
Colors.....	94, 95, 98	Bodies.....	221
Knives.....	243, 244	Chassis.....	221
Asafetida.....	924	Emigrant's, not free as effects.....	903
Asbestos—		Finished parts of.....	221
Fiber, unmanufactured.....	924, 925	Foreign, sent abroad for repairs.....	910
Flour.....	873	Not household effects.....	951
Manufactures of.....	820	Reimported, repairs on.....	952
Woven cords.....	820	Aventurine, Goldstone.....	768
Yarns.....	820	Average price.....	1605, 1606
Ash not a cabinet wood.....	1172	Avocada, or alligator pears.....	998
Ashes:		Axles:	
Rice-hull.....	872	And parts of.....	222, 223
Wood, lye of.....	925	Bars and blanks for.....	222, 223
Asparagus seed.....	360, 392	Forgings for.....	222, 223
Asphaltum and bitumen, crude.....	1039	Fitted with wheels.....	222, 223, 913
Cells for batteries.....	133	Old worn-out.....	1023
Dried.....	1040	Axminster carpets.....	585
Epuré and dried.....	1040	Azalea indica.....	382
Mastic.....	1040	Azimuth mirrors.....	166
Westrumite.....	1039	Azo-para-nitraniline.....	42, 46
Aspic or spike lavender oil.....	74	Azophor red.....	43
Aspirin.....	39, 40	Azuki as beans.....	366
Asilbe clumps, flowers.....	382		
Astrakans:			
Imitation mohair.....	500		
Skins.....	746		
Trimnings.....	598		
Assay of lead in ores.....	277		
Asses' skins.....	1512		
Assessment of duty on—			
Appraised value.....	1344		
Charges.....	1270		

B.

Babbitt metal.....	309
Baby—	
Books.....	671
Carriage robes, knit wool.....	582
Carriages.....	1153
Crys—whistles.....	934
Back saws.....	260

	Page.		Page.
Bacon.....	1043, 1045	Balls—Continued.	
Badger hair.....	700	China, for sign work.....	127
Badges, Salvation Army.....	762	Glass.....	170
Bagatelle balls.....	709	For Christmas tree.....	721
Bag, bamboo basket.....	327	Rubber, new, defective.....	1018
Bagdad wool.....	1182	Steel, as forgings.....	194
Baggage:		Tennis.....	824, 825
Entry of.....	1606	Ballast, coal as.....	968
Forfeiture of articles in.....	1607-1611	Balloons:	
In transit through—		For exhibition purposes.....	1554
Canada.....	11	India rubber, uninflated.....	711, 723
The United States.....	1492	Toy.....	711
Merchandise for sale not.....	1259	Balm of Gilead.....	929
Personal effects in.....	1151-1160	Balm seed.....	393
Statement of value.....	1259	Balsams.....	26, 27
Bagging:		Bamboo—	
Cotton.....	925, 926, 927, 928, 929	Baskets.....	323, 327, 330
Dundee jute.....	929	Dyers' sticks.....	1174
Jutehorse cloth.....	557	Lamp shades.....	327, 328
Old cotton.....	915, 926, 1076	Scrolls and blinds.....	331
Bagpipes, set of.....	1127	Shoots as vegetables.....	373
Bags:		Split.....	1175
American exported and returned.....	907-924	Tea containers.....	1441
Beaded—		Trays.....	327
Leather chief value.....	810	Band iron or steel.....	195, 196
Silk chief value.....	685	Coated with zinc, spelter, or other metal.....	197, 198, 199
Composed in part of beads.....	688	Galvanized.....	197, 198, 199
Containing wool.....	1442	Manufactures of, n. s. p. f.....	219
Grain, reimported.....	924, 1663	Band leather.....	1028
Gunny, old.....	1075	Band-saw steel.....	192, 196, 260
Jute—		Bandages—	
Netting.....	554	Cotton—	
Printed, old.....	546	Gauze.....	513, 541
Plain fabrics.....	546	In the piece.....	512
Striped and twilled.....	547	Horse, of wool.....	597
Sugar.....	546	Bandes Fentre—hat bodies.....	745
Leather—		Bandings—	
Fitted.....	805	Cotton.....	510, 513
Containing opera glasses.....	810, 811	Glacé cotton.....	542
Shopping, fitted.....	809	Flax, hemp, or ramie.....	540
Of peas.....	1439	Narrow strips as.....	512
Paper.....	643, 681	Silk.....	611, 612
Sewing machine.....	959	Spindle.....	516
Silk, for opera glasses.....	1443	Wool.....	584
Silver or german silver.....	753	Bands:	
Sugar, old second hand.....	863	Cotton cord.....	541
Rattan.....	331	Cotton crocheted.....	526
Trading sets, leather chief value.....	807	Cigars, lithographic.....	660
Wistaria.....	331	Flax, hemp, or ramie.....	540
Bains Savonneux.....	102	Massage.....	825
Baits, artificial.....	256	Mousseine.....	621
Baked articles, bread, biscuits, and cakes.....	363	Rafia.....	694
Bakers' tool of trade—waffle iron.....	1100	Silk gauze and chiffon.....	623
Balata belting.....	824	Silk mustache.....	622
Bale is the unit of duty for tobacco.....	350, 352	Steel.....	195, 196, 204
Baling twine.....	822	Banana flour.....	870
Ball bearings.....	193	Bananas, dried.....	409
Raceways.....	194	Banners:	
Washers, parts of.....	194	As regalia.....	1122
Ball—Clay.....	115	Silk, painted.....	845
Clocks.....	291	Baptismal fonts:	
Balls:		Not regalia.....	1123
Antifriction.....	193	Specimens of sculpture.....	1126
Bagatelle.....	709	Barbados fancy molasses.....	340
Billiard.....	709	Barbed wire.....	1163
Chess.....	709		

	Page.		Page.
Barberry juice.....	59	Baskets—Continued.	
Barbs of feathers.....	732	Cane, coverings for garlic.....	1431
Bar iron.....	186, 187	Chief value silk.....	328
Barium.....	263	Chip, straw, willow, wood.....	329
Binoxide of.....	28	Cotton lined.....	328
Carbonate of precipitated.....	27	Easter, bamboo or chip.....	327, 710
Chloride of.....	27	Embroidered linen.....	328
Dioxide of.....	27	For liquor in bottles.....	1441
Sulphate of.....	87	Hinoki.....	330
Bark:		Leather fitted.....	805, 807
Baskets.....	329	Lined with silk.....	328
Birch.....	1056	Osier or willow.....	330
Cinchona.....	929	Palm-leaf.....	822
Cork.....	708	Rattan.....	331
Drugs, advanced.....	54	Sea grass.....	833
Drugs, not advanced.....	979	Shida.....	328, 330
Fern boxes or baskets.....	329	Small, as toys.....	710, 985
For tanning, ground.....	1139	Split bamboo.....	330, 331
Uganda tree.....	334	Tea containers.....	1441
Barking machines not machine tools.....	298	Vegetable tissue.....	330
Bar-le-due, jelly.....	406, 409	Willow.....	328
Barley:		Wicker, containing sewing sets.....	807
Exported and returned as ma't.....	915	Wistaria.....	331
German export bounty on.....	1534	Wood straw or compositions of wood.....	326,
Pearled, patent, or hulled.....	359		327, 328
Screenings.....	358, 359	Bas-reliefs not statuary.....	848, 852
Scorched and smoked.....	358	Bast.....	1006
Barometers.....	1089, 1090	Bastard Brazil nuts.....	424
Barometer scale.....	142	Bass fiber for brooms.....	558
Barrel buttons.....	702	Bassine fiber.....	558
Barrel:		Bassinets, willow.....	328
Heads, wood.....	331	Basswood.....	1164, 1173
Hoops, iron or steel.....	195, 196	Bath—	
Barrels:		Babies and tubs—Entireties.....	712, 717
American, exported and returned.....	907, 910, 924	Bricks.....	107, 128
Containing fruit.....	320	Mats—	
Empty.....	320	Cotton.....	520, 589
For shotguns and rifles.....	248	Jacquard figured cotton.....	521
Shotgun, forged.....	249	Robes, terry cloth.....	522
Usual coverings.....	1431, 1439, 1446	Salt, perfumed.....	83
Barrettes set with imitation jet.....	758	Tubs, artificial stone.....	133
Bars:		Bathing—	
Aluminium.....	263	Shoes, embroidered, wool.....	794
Axle.....	222, 223	Trunks, cotton.....	498
Forged steel.....	205	Baths, photo, glass.....	144
Iron or steel—		Batiste, Trouville.....	799
Cold rolled.....	209, 210	Batons, manufactures of wood.....	834
Polished.....	209, 210	Bats, cricket, willow.....	324
German silver.....	266	Battenberg—	
Muck.....	186, 187, 188	Braids.....	790
Steel.....	202, 203, 204	Rings.....	525
Baryta:		Scarfs.....	778
Carbonate of.....	1163	Batteries:	
Coated paper.....	643	Electric storage.....	1087
Sulphate of.....	87	Grenat.....	1090
Barytes and barytes earth.....	87	Pocket, for physician.....	1091
Baseballs.....	712	Battery rods, carbon.....	129
Base bullion or lead bullion, weight of.....	278	Bating, cotton.....	520
Bases for—		Bauxite:	
Pedestals, marble.....	841	Crude.....	930
Statues.....	850	Refined.....	24
Basic slag.....	1008, 1010	Bayonets.....	242, 243
Baskets:		Bay rum:	
Bamboo.....	327, 1429, 1441	Essence or oil.....	1217
Bark.....	329	Or bay water.....	446
Berry, of wood.....	327	Not spirituous liquor.....	457

	Page.		Page.
Beacon ale.....	464, 870	Beans—Continued.....	
Bead—		Tonqua or tonka.....	106
Chains.....	755	Reciprocity on.....	1511
Fringes, trimmings.....	688	Vanilla.....	106
Jet trimmings or ornaments.....	798	Reciprocity on.....	1511
Necklace, imitation jet.....	683	Bearings:	
Beaded—		Agate.....	179
Articles in part of netting.....	684, 798	Ball.....	193
And spangled trimmings.....	684	Raceways for.....	194
Bags and purses.....	685	Washers, parts of.....	194
Bamboo curtains.....	686	Crystal stone.....	179
Bracelets.....	686	Garnet.....	179
Braids.....	802	Roller.....	193
Buttons.....	705	Sapphire.....	130
Cords.....	690	Beaver strips.....	743, 745
Curtains composed in chief value of wood.....	688	Bebeirine sulphate.....	22
Fan chains.....	686, 688	Bêches de mer or trepangs (sea cucumbers).....	994
Fringes.....	684	Bed coverings.....	521
Gimps.....	691	Bed sets:	
Leather bags, chief value leather.....	810	Made on Nottingham machine.....	523
Lumber.....	1166	Lace.....	775, 798
Necklaces in chief value of beads.....	684	Beds, feather.....	735, 739
Ornaments and trimmings.....	691, 778	Bedsides of woolcarpeting.....	590
Shades for table lamp.....	685	Bedspreads:	
Silk goods, nets, and tidies.....	690	Fringed.....	779
Trimmings.....	684, 691	Nottingham.....	803
Beads:		Beech leaves, preserved.....	732
Agate.....	879	Beef:	
Amber.....	683	And mushrooms.....	1044
Colored glass.....	688	Fat.....	1073
Dough, paste.....	691	Fresh.....	1043
Glass or paste.....	683, 690	Jerked.....	1045
Graduated and strung as necklace.....	684, 685	Weasands.....	868, 934
Imitation pearls pierced.....	683, 689	Beer:	
Not threaded or strung.....	688	Allowance for damage.....	459
Nail-head.....	687	Coloring for.....	54
Of wood.....	684	Gauge of.....	1672
Rhinestones and colored stones.....	686	Ginger.....	463
Strung.....	686	In bottles, jugs, or other containers.....	458
Strung upon wire or bead trimmings.....	691	Mats, printed on pulp.....	752
Unstrung or strung loosely.....	683	Mugs.....	879
Wooden, for rosaries.....	690	Beet-knife sharpeners.....	891
Beams:		Beet-root ashes.....	925
Containing spun silk as covering or con- tainers.....	1426, 1428	Beet—	
Iron or steel.....	188, 189	Seed.....	393, 1107
Wood as lumber.....	1172	Slop.....	1010
Bean—		Sugar—	
Cake.....	370	Above No. 16 Dutch standard.....	341
Flour.....	370, 870	Residue.....	1010
Stick.....	372, 374	Beets:	
Beans:		All kinds.....	366
Daizu as.....	366	In tins.....	366
Dry, in tins.....	365	Sliced and dried.....	366, 367
Drugs advanced.....	54	Sugar.....	367
Dutiable weight of, in tins.....	1670	Sugar from.....	338, 339, 340
Export bounty on, by Germany.....	1534	Beeswax.....	930
Green pod.....	367	Begonia bulbs.....	382
Prepared or preserved.....	367, 368	Belladonna—	
Salted, in wooden boxes.....	368	Leaves.....	982
Seed.....	366	Plasters.....	86
Soya, cooked and salted.....	368	Root, sliced.....	982
String—		Bells:	
As beans.....	366	Bicycle.....	222
In brine, as prepared.....	268	Broken, and bell metal.....	930
		Belt buckles.....	273, 763

	Page.		Page.
Belts and belting:		Bibles	930
Artificial silk.....	629, 630	Covers for.....	930
Balata.....	824	Parts of.....	930
Blankets for printing machinery.....	512	Stand for, not regalia.....	1200
Cotton.....	510, 518	Bibs, cotton, in the piece	496, 497
Bullions.....	271	Bibulous paper.....	642
Driving rope.....	514, 517	Bicarbonate of soda.....	102, 103, 104
Elastic.....	515, 541, 616	Bichromate of soda.....	102
Flax, hemp, or ramie.....	540	Bicycle —	
For cigarette machines.....	516	Cement.....	113
For machinery.....	513	Protectors.....	724
India rubber.....	271	Bicycles:	
Lame or lahn.....	271	Accessories, and parts of.....	164,
Leather.....	805, 807, 808, 1028	165, 222, 225, 261, 263	
Machinery of wool.....	567	Not household effects.....	953
Metal threads.....	271	Not personal effects.....	1153, 1158, 1159
Scraps, gutta-percha.....	866	Not tools of trade.....	1100
Silk.....	611, 612, 613	Bill of lading:	
Tinsel wire.....	271	Delivery—	
Wool.....	584	By collector, without.....	1232
Bends of leather.....	1030	To holder of.....	1233
Benedictine.....	445	Copies of.....	1238
Bengal or Patna rice.....	362	Evidence of ownership.....	1229
Bengal sticks.....	724	Holder of, owner of goods.....	1260
Bengalische matches, fireworks.....	724	Not negotiable.....	1234
Benitier, an urn to hold holy water.....	1124	Regulations governing I. T. shipments..	1689
Bent wood chairs, Vienna.....	336	Retained by collector.....	1233
Benzole, coal-tar preparation.....	49	To order indorsed by shipper.....	1229, 1233
Benzzidin.....	49	Unindorsed, collector's liability.....	1234
Benzaldehyde.....	49	Bill of particulars—	
Benzzidin base.....	42, 50	Amendment of.....	1701
Benzine.....	1070	Failure to serve.....	1703
Soap.....	101	Not in time and defective.....	1702
Benzoate of soda.....	102	Bill of sale	1303
Benzoic acid.....	888	Billets, steel	202, 203, 204, 207, 1128
Benzol.....	48, 49	Billiard—	
Benzyl.....	49	Balls.....	709
Bergamot oil.....	74	Chalk in boxes.....	53
Berlin blue.....	87	Surrounds, as cocoa mats.....	833
Bermuda crocuses, bulbs.....	385	Billikens	712
Berries:		Bimsteins, scouring brick	114
Drugs—		Binders' board	665
Advanced.....	54	Binding twine	557, 931
Crude.....	979, 997	Bindings:	
Edible—		Braids used as.....	542
Defined.....	411	Cotton.....	511, 512, 516
In natural condition.....	404, 405	End papers, paper chief value.....	679
In tins.....	406	Flax, hemp, or ramie.....	540
In water as packing.....	406	Mohair.....	598
Measurement of.....	411	Silk.....	611
Prepared or preserved.....	404, 405	Skirt.....	516, 584
Berry baskets, thin wood.....	327	Wool.....	584
Betel—		Worsted.....	585
Leaves.....	425	Binitrobenzol	49, 50
Nuts.....	423	Binitrochlorbenzol	49
Betulinum oil	1072	Binitrotoluol	50
Beverages:		Binitrotoluole	48
Containing spirits.....	443	Binitrotuluol	49
Similar to soda water, lemonade, etc.....	463	Birch:	
Beta naphthal	49	Bark—	
Betanaphthol	47	As stripped from the tree.....	1055, 1056
Betanaphthylamine	50	Canoes, diminutive.....	334, 335
Bezoar	18	Lumber.....	318
Bilberries in tins	406	Not a cabinet wood.....	1172
Bibby's oil-cake feed	1063	Tar oil.....	1084, 1067

	Page.		Page.
Birds:		Blanco	29
And land and water fowls.....	931	Blank books	669
Dressed suitable for millinery orna- ments.....	729, 730	Blankets:	
Game.....	423, 426	Auto, horse, and Mexican.....	574
Imitation, made of artificial leaves.....	736	Cotton.....	520
Live game.....	931	And wool.....	522
Mounted.....	731	Cloth.....	522
Nests.....	874	Figured.....	521
Paradise, crude plumes.....	738	For printing machinery.....	512
Skins.....	732, 738	Defined.....	573, 574
Stuffed—not suitable for millinery orna- ments.....	735	Embroidered woolen.....	573
Wild plumage of, prohibited importa- tion.....	729	Endless felt or machine.....	599
Biscuits:		Jute and cattle hair.....	554
Containing fruit or confectionery.....	363, 364	Usual coverings for horses.....	899
Sweetened.....	364, 932	Wool.....	572
Bishop's stockings.....	1125	Blanks:	
Bismark herring.....	402	Axle.....	222, 223
Bismuth.....	933	Button, imitation precious stones.....	704
Salts and compounds of.....	99	File.....	245, 246
Subnitrate of.....	100	For railway tires.....	262
Bisque:		Glass.....	171
Babies.....	722	Pearl button.....	707
Dolls composed of.....	718	Pickle dish.....	173
Figures.....	127	Blasting caps	729
Rings.....	126, 132	Bleacher's blue.....	88
Wares.....	122, 123	Bleaching powder.....	30
Bisulphite of lime and lampblack.....	23	Blinds:	
Bisulphite of carbon.....	22	Bamboo, straw, wood, or compositions of wood.....	326, 331
Bitfool, chemical compound.....	18	Porch and window.....	787
Bits and bit covers, saddlery.....	1036	With colored threads.....	329
Bitters:		Bloater paste.....	378
Amer picon.....	444	Bloc hyalin, toilet preparation.....	83
Angostura.....	445	Blocks:	
Arp's pepsin.....	444	And booklets, calendar.....	946
Anchor.....	444	Brush.....	1171
Bonekamp.....	445, 1519	Chopping.....	1167
Containing spirits n. s. p. f.....	443	Creosoted wood paving.....	332
Fernet.....	444, 445	Gun.....	334, 335, 336, 1164
Ferro-china bisleri.....	444	Hub.....	1173
Proprietary.....	34	Rough hewn, sawed, or bored.....	1164
Strasburger.....	445	Blood:	
Bitumen	1039, 1040	Albumen.....	894
Bixine extract	96	Char.....	962, 963
Black—		Dried.....	935
Butt lumber.....	1168, 1169	Bloodstone, pieces of	771
Cumin seed.....	1110	Blooms:	
Eyed peas.....	382	For railway tires.....	262, 314
Laces.....	1727	Steel.....	202, 203, 204, 1128
Pigments.....	89, 91	Blotting paper.....	640
Salts.....	1094	Blow accordions.....	712, 836
Tare seed.....	1110	Blue:	
Varnish.....	46	Berlin, Prussian, and Chinese.....	87
Blacking	28	Developer.....	47
Blackleg vaccine or anthrax.....	905	Ultramarine.....	87, 88
Blacksmiths' hammers, sledges, and tongs.....	223	Vitriol, or sulphate of copper.....	935
Bladders of animals and fish.....	933, 934	Wash.....	87
Manufactures of.....	820	Blueberries, preserved in tins	406
Blades:		Blue-print paper	638, 646, 649
Bucksaw.....	260	Boas:	
Knife.....	236, 237, 240	Dressed lambskins.....	746
Razor.....	237, 238	Feather.....	736
Scissors or shears.....	236, 237, 240	Flowers, leaves, and feathers.....	729
Sword.....	242	Board:	
Blanc-fixe or artificial sulphate of barytes....	87	Binders'.....	665
		Bristol, not used for drawing.....	664, 667
		Paper.....	665

Board—Continued.	Page.	Board of General Appraisers—Continued.	Page.
Pastel, for drawing.....	663	Mandate of, disregarded by collector.....	1324
Press.....	664	Powers of a circuit court.....	1318
Measure.....	1169	Not discretionary.....	1651
Board of General Appraisers:		None to mandamus collector.....	1345
Appointment, compensation, and organization of.....	1318	Reappraisements by.....	1334-1358
Appeals from decisions of.....	1329, 1385, 1494-1507	Rehearings by.....	1319, 1323, 1324
Authority of, to summon importers.....	1421	Boards:	
Decisions, finality of.....	1320, 1359, 1501	Bolting.....	333
Amendment of.....	1322	Brazil wood.....	319
Open to inspection.....	1423	Dressed.....	1172
Publication of.....	1423	English oak.....	316
Review of, by courts.....	1404	Pear-wood.....	319
Finding of facts by, not reviewable.....	1327, 1404	Planed, dovetailed, and glued together..	332
Evidence—		Sawed.....	1164
Additional.....	1382, 1391	Boat:	
Affidavits, admissibility of.....	1387	Dredge without power not a vessel.....	1650
Ex parte affidavits.....	1322	Fishing, as tools of trade.....	1100
Depositions excluded.....	1321	Knees.....	1168, 1172
Record in one case applied in another.....	1321, 1322, 1387	Boats, dutiable under section 3114.....	1638
Expert knowledge of.....	1320	Bobbins:	
Hearing by one board, decision by another.....	1322	For lace-making machines.....	302
Jurisdiction—		Linen.....	542
Abandoned goods.....	1475	Boch tiles.....	109, 110
Appraisements, to determine legality of.....	1392	Bodkins, metal.....	252, 253, 256
Casualties under 2984 R. S.....	1391, 1613	Bohea tea.....	1146
Charges for marking.....	1391, 1393	Bohemian glass.....	141, 151
Confined to imported merchandise.....	9, 1384, 1387, 1389	Boiler—	
Damaged merchandise.....	1375, 1391	Flues, steel.....	235
Determination of questions of law and fact.....	1374, 1392	Iron, enamel lined.....	251
Discriminating duty.....	1392	Iron or steel.....	189, 190, 191, 192
Drawback claims.....	1500	Plate shearings.....	1024
Expense of stamping cigars.....	1393	Boilers, cast-iron.....	305
Expense unloading, officers'.....	1393	Bologna sausage:	
Export bounty.....	1539	And sauerkraut mixture.....	374
Fees and charges.....	1358, 1368, 1381	Canned.....	1046
Forfeiture cases.....	1383, 1395	Bolt blanks, iron or steel.....	223, 224
Head money tax.....	1387	Bolting—	
How acquired.....	1346	Board.....	333
Mail importations.....	1367	Cloths.....	936
Merchandise from insular possessions.....	1388, 1389	Copper wire gauze.....	217
Payment of duty necessary to.....	1367	Silk gauze.....	627, 628
Questions of weight and gauge.....	1394, 1675	Bolts:	
Rate and amount of duty on imported goods.....	1358, 1387	Carriage, and step.....	225
Rate of duty higher than assessed.....	1319, 1320, 1331, 1362, 1369	For construction of vessels.....	1558
Reappraisements, may order.....	1338	Iron or steel.....	223, 224
Reliquidations by order of Secretary of Treasury.....	1620	Nuts, and packing, not sea stores.....	1660
Repairs to American vessels.....	1639	Security, part leather.....	224
Seized goods.....	1383, 1388	Stay.....	225
To determine validity of regulation of Secretary of Treasury.....	1392	Stud.....	225
To examine and decide cases submitted.....	1385	Boltrope, Russian.....	530
Tonnage duty on yachts.....	1225	Bombay or wild mace.....	435
Tea standards.....	1393	Bombés, cylinder glass.....	154
		Bombs:	
		Chinese.....	724
		Fireworks.....	723
		Bonbon holders.....	721
		Bonbons or paper crackers.....	711
		Bond paper.....	661
		Bonds:	
		Cancellation of.....	1679
		Conditions of, fulfilled, when.....	1680
		Execution of.....	1681
		For delivery of unexamined packages.....	1632, 1633, 1634

Bonds—Continued.		Page.	Books—Continued.		Page.
For duties on goods warehoused.....	1653, 1679		Cigarette.....	856	
For owner's declaration.....	1253		Combination pocket memorandum.....	673	
For production of invoice.....	1242, 1244		Containing lithographs.....	673	
Illegally demanded.....	1684		Copyrighted.....	1691	
Of copartnerships.....	1679, 1683		Examination of importer's.....	1462	
Reported for prosecution can not be canceled by the collector reporting them..	1679		Exclusively in foreign language.....	946	
Bone—			Foreign language with English references.....	945	
Ash.....	936, 937		For educational institution.....	948	
Black.....	89, 962, 963		For libraries.....	648, 949, 950	
Buttons covered with lace.....	706		For private distribution.....	938, 942	
Casings—			For public schools.....	950	
Cotton.....	511, 518, 543		For United States or Library of Congress.....	938	
Silk.....	611		Illustrations for.....	655	
Charcoal.....	962		Lithographic covers—"Containing ".....	657	
Char, or bone black.....	962		Mail, importations of.....	1712	
Crochet needles.....	255		Memorandum with mirror and pencil.....	672, 673	
Dust.....	936, 937		More than 20 years old.....	939	
Meal.....	938		Needle.....	252, 253, 811	
Manufactures of.....	821		Music.....	669	
Size.....	870		Printed in a foreign language.....	947	
Swords.....	242, 243		Litmus paper.....	640	
Precipitate.....	1009		Pattern.....	675	
Tankage.....	1009		Penmanship.....	939	
Tallow.....	69		Professional.....	953, 1096, 1099, 1100	
Boned salmon.....	397		Rebound.....	942	
Bones:			Religious.....	675	
Crude, burned, calcined, ground, or steamed.....	936		Royalties on.....	1315	
Crushed or ground.....	937		Sample.....	670, 674	
Dress.....	826		Slate.....	669, 672, 675	
Degelatinized.....	937		Unbound.....	672, 946	
Sawed.....	937		Wedding.....	671	
Bonito, dried.....	398		Sewing machine for.....	959	
Bonnet—			Text.....	943	
Pins.....	285		Used by the blind.....	943	
Wire.....	212, 213		Boot—		
Bonnets:			Lacings.....	511, 540	
Fur.....	751		Wipers.....	879	
Scotch, wool knitted.....	583		Boots and shoes:		
Straw.....	693		Chief value of leather.....	1028	
Book—			India rubber.....	1218	
Backs, leather.....	809		Boquets, artificial flowers.....	735	
Cover printing paper.....	638		Borate—		
Bookbinders—			Material.....	19, 954	
Agate burnishers.....	133		Of manganese.....	19	
Flax webbing.....	556		Of lime.....	954	
Bookplate, engraved.....	258		Of soda.....	102, 954	
Booklets.....		658-675	Borax.....		103
And books distinguished.....	671		Crude and unmanufactured.....	954	
Chief value of pyroxylin.....	655		Glass.....	954	
Composed wholly or in chief value of paper lithographically printed.....	652		Refined.....	102, 103	
In foreign languages.....	655		Bordered crash.....		550
Imported in unassembled parts.....	655		Borders—paper.....		649
Toilet powder.....	83		Boro—carbone.....		987
Books.....		938-951	Bort—industrial diamonds.....		770, 776
Appraisement of.....	1315		Botanical specimens.....		1119
Baby.....	671		Bottle:		
Blank.....	669		Caps—		
Chief value of leather.....	671		Paper.....	682	
Chiefly in foreign language.....	656, 673, 944		Metal.....	295	
Children's—			Viscol.....	296	
Foreign language.....	655		Charges.....	137	
Lithographic, imported in parts—			Glassware.....	139	
Entireties.....	654, 656, 657		Stoppers—		
			Glass.....	137	
			Porcelain.....	125	

	Page.		Page.
Bottled beer—Corks and bottles not material used in manufacture of, within the meaning of drawback laws.....	1577	Box tops:	
Bottles:		Made of surface-coated paper.....	649, 666
American, returned with foreign labels....	915	Paper—	
Blown-glass.....	136	Lithographed.....	657, 659
Containing—		Stamped into designs or shapes.....	679
Angosture bitters.....	1439	Silk.....	620
Ad valorem merchandise.....	137, 138, 1444	Box shoeks:	
Ale and beer.....	140	American, returned.....	907
Anchovies.....	138	For fruit boxes.....	320, 321
Extract of meat.....	138	Boxes:	
Free goods.....	139, 1088	American, exported and returned.....	907
Mineral water.....	140	As containers or coverings.....	1423-1454
Scientific preparations.....	1081	Containing—	
Still wine less than 1 pint.....	452	Artists' water colors.....	1440
Covered with wicker.....	324	Billiard chalk, usual covering.....	53
Covers and caps of palm leaf.....	823	Collar button of metal.....	1442
Droppings.....	137	Cotton laces.....	1443
Empty Chianti wine.....	138, 140	Dominoes, telescopes, opera glasses, and barometers.....	1445
Filled.....	137, 140	Empty bottles, usual coverings.....	320
Glass.....	135, 144	Fans and silk goods.....	1443
In celluloid cases dutiable separately.....	880	Picture blocks, usual coverings.....	1446
Ink—		Powder puffs, usual coverings.....	1431
Stoneware.....	1430	Scientific articles.....	1081
Trick.....	145	Celluloid.....	52
Nonrefillable.....	136	Confectionery, unusual coverings.....	1445
Imported 6 in a case not dutiable as 12 per case.....	452	Covered with paper or cotton.....	643, 644
Not used as containers.....	139	Fruit, special provision for.....	320, 322
Old.....	139	Fancy—	
Opal glass.....	139	Covered with silk plush.....	1443
Reagent.....	1084	Wood.....	336, 643
Silver scent, not jewelry.....	765	Handkerchiefs, usual coverings.....	1429
Siphon.....	140, 147, 150	Jewelry, of wood and paper, wood chief value.....	647
Stone, not coverings.....	1432	Leather fitted.....	805
Thermos.....	145	Lemon.....	321, 1439
Cylinders for.....	145	Lined with cotton or other fiber.....	643
Value of.....	1401	Match, of paper.....	1443
With contents dutiable at ad valorem rates.....	139	Metal, for artificial flies.....	256
With cut-glass stoppers.....	146, 151	Metal, containing mourning pins.....	1444
With metal mountings.....	309	Music, as musical instruments.....	836
Woulff.....	139	Orange.....	321
Bottoms, copper.....	268, 269	Surface-coated paper as usual containers.....	1429
Bounty:		Paper, cut or shaped for.....	666
Granted on goods exported, countervailing duty on.....	1532-1539	Papier-mâché.....	643, 1429
Australia, fruits and wool.....	1534	Paper, surface-coated, embossed.....	643, 647
Canada, wood pulp.....	1537	Plain paper.....	651
France, fish, sugar.....	1534, 1537	Powder, coverings.....	1437
Germany, beans, peas, grains, and flours.....	1534	Special provisions for paragraph 195, act of 1909.....	1210
Great Britain, spirits.....	1534	Tin, containing biscuit.....	1453
Panama, toquilla straw.....	1534	Tin, for matches.....	1443
Russia, sugar.....	1538	Tare of.....	1666
Sugar.....	339, 343, 1535, 1537	Tops for, of lithographed paper.....	657
Bouillon cubes.....	427	Willow.....	325
Boule furniture.....	333	Wooden, containing bottles.....	1443
Bound views of American scenes.....	670	Wood, fancy.....	336, 643
Boutonnères.....	729, 732, 735, 739	Zinc, as containers of blanco.....	233
Bovovaccine.....	905, 906	Boxwood:	
Bovril wine.....	36, 458	Cabinet wood.....	315, 1174
Bowie knives.....	245	Evergreen seedlings.....	388
Bowls, pipe.....	332	Free, act of 1894.....	1165
Box covers.....	659	Sticks in the rough for umbrella handles.....	1175
		Bracelets:	
		Beaded.....	686

	Page.		Page.
Bracelets—Continued.		Brazilian cement.....	113, 1212
Children's, not toys.....	722	Brazilian or Scotch pebble.....	955
Celluloid.....	757	Brazing plates.....	869
Braces:		Bread:	
Cotton.....	510	Containing chocolate, nuts, fruit, or con-	
Silk.....	611	fectionery.....	363
Wool.....	584	Knives.....	243, 244
Brads, iron or steel.....	1058	Not specially provided for.....	932
Braid material, ramie strips.....	553	Waverly.....	932
Braided articles, cotton.....	541	Breakage, allowance for, on wines and	
Braids.....	774-777, 790, 800	liquors.....	448, 449
Chip.....	695	Breast pumps, chief value hard rubber.....	823
Clo-clo.....	779	Breccia:	
Cotton.....	692*	As marble.....	174, 175
Elastic.....	518, 613, 779	Manufactured.....	177, 178
Featherstitch.....	794, 801	Breech-loading rifles and shotguns.....	248, 249
Gilt soutache.....	801	Bremen thaler, currency value of.....	1630
Gimps.....	790	Brewer's pitch.....	55
Gold straw and silver straw.....	697	Brewing-machine parts.....	227
Grass.....	693	Briar root or wood.....	315
Hat.....	695, 697	Briarrose, stocks, cuttings, or seedlings of.....	386
Hemp.....	694	Brick.....	107, 108
Herringbone.....	801	Bath.....	128
Honiton.....	801	Rubble.....	128
Horsehair and silk.....	631	Rubbing.....	130
Horsehair, for hats.....	696, 882	Scouring.....	114, 130
India-rubber threads.....	779	Bridle—	
India rubber, chief value cotton.....	825	Butts.....	1030
Imitation horsehair.....	632	Rein backs.....	1030
Metal thread.....	782, 783	Tapes.....	517
Metal.....	802	Brilliant sticks and matches.....	724
Mohair.....	568	Brilliantine.....	61
Straw.....	693, 694, 695, 697	Brime.....	1218
Raffia.....	826	Brimstone.....	1131
Ramie.....	692	Briquettes, coal.....	966
Willow.....	693	Brisling, salted or smoked in tins.....	396, 398
Used as bindings.....	542	Bristles:	
Braille Tablets.....	943	Crude, not sorted or prepared, bunched.....	955, 956
Braunstein Grob.....	1042	Feather.....	824
Bran.....	360	Sorted, bunched, or prepared.....	700
Branches of trees.....	1056	Bristol board.....	664, 667
Brandy:		British—	
Abandoned in warehouse, act of Decem-		Commercial travelers' samples.....	1556
ber 1, 1869.....	1597	Excise law.....	1533
Allowance for evaporation of.....	441	Gum.....	63
Coloring.....	54, 444	Spirits, countervailing duty on.....	1534
Distilled from grain.....	441	Broaches, watch-guard, plated.....	313
Dutiable quality of.....	441	Brocades.....	267, 268
Imitations of, rate on.....	445	Broken—	
Proof and gauge of.....	441	Demijohns, nonimportation.....	10
Brandies, reciprocal rates of duty on.....	1510, 1519	Glass.....	168, 171, 173
Brandt glass siphon bottles.....	140	Rice.....	361
Brass—		Brokerage and lot money.....	1440, 1441
Buttons.....	275	Bromine.....	956
Candelabra.....	1127	Bromofluorescic acid.....	41
Finger rings, small toys.....	719	Bronze—	
Lecturn.....	1123	Articles artistically fashioned.....	848
Old clippings from.....	954	Brocades.....	267, 268
Skimmings or ashes.....	955	Busts and statuettes.....	846, 848, 849, 851
Wire, manufactures of.....	212, 218	Castings.....	973
Brattice cloth jute.....	544, 545	Castings for churches.....	1127
Briza Minima, dried wheat and grasses.....	739	Figures.....	290
Braziers' copper.....	268, 269	Flitters.....	267, 268
Brazil—		Hinges.....	224
Nuts.....	422	Knockers.....	848
Wood boards.....	319	Leaf.....	726

Bronze—Continued.		Page.	Building—		Page.
Mask.....		842	Forms, iron or steel.....		188
Metallics.....		267	Stone, travertine.....		183
Powder.....		267, 268	Bulb beams, iron or steel.....		188, 189
Ornamented tables.....		336	Bulbs:		
Replicas.....		1205	Drugs—		
Statuary.....		840, 842, 848	Advanced.....		54
Wire cloth.....		214	Crude.....		979, 1107
Wire rods.....		973	Flowering.....		382-386
Brooches:			Electric-light.....		168, 169
Brass as jewelry.....		757, 759	Exclusively for propagating purposes.....		384
Enameled and plated, jewelry.....		763	India rubber.....		823
Toy.....		714, 719	Lily, as vegetables.....		373
Brook trout—fresh-water fish.....		993	Term defined.....		384
Broom corn.....		956	Bulbous roots:		
Broom handles, wood.....		1164	Drugs—		
Brooms.....		698, 699	Advanced.....		54
Brosser overstretch machine.....		959	Crude.....		979, 1107
Needles for.....		253, 254	Bullets, old.....		307
Broux mixture, alcoholic perfumery.....		83	Bullion, gold or silver.....		956
Brown rice.....		362	Bullions:		
Brown tartar.....		26	And metal thread.....		271, 273
Brush blocks.....		1171	Glass.....		153
Brushes.....		698-700	Bull's-eye lenses.....		164
Carbon, chief value.....		127	Bull's-eyes, glass.....		153
Electrical, of graphite, known as morganite.....		129	Bumpers, of vegetable fiber.....		553
Fittings for leather cases.....		809	Bungo sulphur.....		1132
Brussels—			Bunting woolen.....		574
Carpet.....		586	Bur waste.....		1192
Rugs.....		591	Burden of proof.....		1260, 1677, 1702
Sprout seeds.....		390	Burdock root.....		981
Buchu leaves.....		65	Bureau covers.....		800
Buckles:			Burettes.....		1124
Belt.....		273	Burgundy pitch.....		957
Covered with cloth.....		218	Burlaps.....		543, 544, 1213, 1214
Fancy, pearl and metal.....		275	Bags made from.....		546, 547
Harness or saddlery.....		1030	Black.....		555, 556
Imitation gold and silver as jewelry.....		752, 762, 763	Dyed, colored, or striped.....		1213, 1214
Metal—			So-called striped and sized.....		556
Valued at less than 20 cents per dozen.....		755	Term construed.....		556
Valued at more than 20 cents per dozen.....		758	Twilled.....		544
Ornaments for slippers not jewelry.....		765	Burners and mantles.....		251, 281
Trousers.....		273	Burnishers, agate, bookbinders'.....		133
Waistcoats.....		273	Burnt ochre.....		91
Buckram—			Burnt refuse pieces of ivory.....		963
Black burlaps.....		555	Burnt starch.....		64
Cotton.....		527	Burrstones.....		957
Jute.....		544	In blocks.....		1129
Bucksaw blades.....		260	Bushel of apples defined.....		406
Buckwheat—			Business cards.....		667
Flour and grits.....		956	Busts:		
Export bounty on.....		1534	Bronze, cast.....		852
Budding knives.....		236, 237, 238	Lapis lazuli—precious stones.....		849
Buds:			Marble, metal, or plaster.....		279
Drugs—			Pedestals for.....		841
Advanced.....		54	Butchers'—		
Crude.....		979	Knives.....		243, 244
Lily.....		386	Saws.....		260
Buffalo hides.....		1015, 1117, 1546	Wool.....		1182
Buffing sticks.....		699	Butter:		
Bugles shaped like cigarette holders.....		856	And butter substitutes.....		365
Buggy not household effects.....		951	Culture starters as starch.....		434
Buhl furniture in chief value of metal.....		334	Knives.....		243, 244
			Button—		
			Blanks.....		706, 876
			Imitation precious stones.....		704

Button—Continued.		Page.	Calendars—Continued.		Page.
Cloth.....		700, 701	Lithographed.....		657
Forms.....		700-701	Notebooks.....		672
Molds or blanks.....		274, 702, 703, 706	Calfskins:		
Shanks.....		274	And hides.....		1116
Buttons—			Distinguished from hides.....		1015
And parts of.....		273-275, 701-708, 756	Glazed.....		1038
Collar and cuff.....		274, 756	Russian, long grain.....		1031
Dress, of metal, valued at more than 20			California:		
cents per dozen.....		756	Duties collected in.....		11
Fancy.....		759, 765	Exposition.....		1595
Metal.....		273-275	Calcined—		
Trousers, steel.....		273	Ash.....		103
Buenos Aires sheepskins.....		1191	Magnesia.....		66
Byrrh wine.....		452	Calcium.....		263
C.			Acetate of.....		957
Cabbage:			Brown or gray.....		957
Dried leaves of.....		395	Carbide.....		958
Seed.....		389, 393	Nitrate.....		957
Cabbages.....		1211	Chloride of.....		957
Partially dried and salted.....		372	Calks, horseshoe.....		195
Cabinet—			Calla bulbs—corms.....		385
For college, not philosophical apparatus.....		1088	Calomel.....		31
Furniture wood.....		331	In 1-pound packages.....		32
Specimens for.....		890, 1050	Caltrop nuts.....		424
Ware, in pieces.....		336	Camel's hair—		
Woods.....		315, 1176	As wool.....		561
Cabinets of coins and old medals.....		1214, 1216	For brushes.....		1188
Cable:			Press cloth.....		563, 567
Submarine not landed.....		217, 1651	Cambia, terra japonica.....		1146
Telegraphic.....		218, 826	Cameos.....		766
Wire.....		216	Coral.....		773
Cables:			Imitation of.....		767
Hemp, istle, manila, sisal, and Tampico			Camera—		
fibers.....		529	Plate holders.....		855
Wire.....		212	Tripods.....		855
Cabretta skins.....		1187	Without lens.....		856
Cachon de laval, a chemical compound.....		23	Cameras—		
Cachons, confectionery.....		346, 348	As personal effects.....		1156
Cadet gloves.....		814	Photographic.....		854
Cadmium.....		957	Camomile oil.....		74
Sulphid of.....		96	Camphor:		
Yellow, as a color.....		98	Crude.....		64
Caffein and compounds of.....		30	Gum.....		62
From tea sweepings.....		31	In balls and tablets.....		969
Cajeput.....		1064	In packages of 2½ pounds or less.....		38, 39
Cake:			Oil or camphor refuse.....		870
Bean.....		372	Refined.....		62, 64
Potato.....		372	Synthetic.....		62, 64
Saffron.....		59, 60	Canada not a country, nation, or State.....		1688
Cakes.....		363	Canadian—		
Caladium bulbs.....		386	Duty part of market value.....		1281
Calamares, shellfish.....		1113	Export duty on wood pulp.....		1537
Calamine, a variety of zinc ore.....		294	Flax.....		996
Calamus root.....		984	Hay in transit.....		1650
Calendar—			Long wools.....		1182
Blocks and booklets.....		946	Postal cards.....		1121
Rolls of metal and paper.....		880	Offspring of American animals.....		900
Cover, for booklet.....		655	Reciprocity act repealed.....		1735
Painted.....		846	Canal Zone.....		1684
Calendars:			Canary seed.....		389, 392
Composed wholly or in chief value of			Cancellation of bond by forged notes.....		1679
paper.....		652	Canceled stamps.....		1120
For advertising.....		660	Candelabra:		
In blocks.....		672	Not regalia.....		1123, 1127, 1205
In form of fan or leaflet.....		657	Onyx.....		180

	Page.		Page.
Candle—		Capsicine.....	20
Shades.....	784, 821	Capsicum or red pepper.....	435, 437
Tar.....	875	Plasters.....	86
Wicking, cotton.....	511	Capsules:	
Candles, paraffin.....	719, 820	Filled.....	27
Candlesticks, as regalia.....	1122	Chemicals or medicines imported in.....	37
Candy:		Containing carbonic-acid gas.....	232
Boxes, silk-embroidered.....	792	Captured goods, sold, duty on.....	12
Immediate coverings of.....	346, 347	Carat—weight of precious stones.....	767
Weight of.....	346	Caraway—	
Cane—		Oil.....	74
And umbrella, combination.....	862	Seed.....	389, 1110
For chairs.....	323	Carbazol.....	894
Juice, sirup of.....	337-340	Carbolic—	
Made from rattan.....	323	Acid.....	49, 888
Seating, imitation, cotton.....	528	Soap.....	101
Sugar in natural state.....	344, 345	Carbolineum Avernarius.....	45, 969
Canes:		Carboleum.....	16
Glass, cornelian.....	174	Carbon:	
Sword.....	242	Animal.....	936
Walking sticks for, finished or unfinished.....	861, 862	Arc lamp.....	133, 134
Canisters, tea, usual coverings.....	1434	Articles of, susceptibility to decoration.....	134
Canna bulbs.....	382	Battery rods.....	129
Canabis Indica.....	35	Brushes.....	127
Canned—		Electric lighting.....	133-135
Artichokes.....	374	Disks.....	127
Ginger and mixed fruits.....	376	Gas retort, ground.....	129
Seaweed.....	371-373	Manufactures of, n. s. p. f.....	127
Tomatoes.....	374	Paper.....	680
Cannetille.....	271	Pencils.....	135
Cannon, old.....	309	Plates.....	127
Canoe cedar or red cedar.....	1178	Points.....	135
Canoes—		Pots, porous.....	133, 134
As personal effects.....	1157	Sticks.....	134, 135
Birch bark and wood, diminutive.....	334, 335	Unmanufactured.....	127
Cans:		Carbonate of baryta (witherite).....	1164
Chief value metal.....	1210	Carbonado, or black diamonds.....	979
Tin, as containers.....	1431, 1453	Carbonate of—	
Canton cloth wool weft.....	576	Magnesia.....	66
Canterbury cap and priest's cloak.....	1124	Potash.....	1094
Canvas:		Soda, crystal.....	102, 103
Artists'.....	553	Sodium.....	104
Congress, etamines.....	483	Strontia.....	22
Embroidery.....	556	Carbonic acid gas.....	16
Flax.....	551	Carbonization of wool.....	1159
Hose, flax.....	536	Carboys:	
Jute.....	544	American exported and returned.....	907-909
Padding, jute.....	556, 557	Glass.....	135, 136, 138
Capacity of grape barrels.....	417	Carbosolite.....	128
Cape Angoras, goat skins.....	1118	Cardamon:	
Capers.....	375, 377	Oil of.....	74
In brine.....	374	Seed.....	1107, 1110
In salt.....	376, 868	Carmelite ware.....	120, 121
In vinegar.....	376	Cardboard:	
Pickled.....	375, 377	Cut, die cut, or stamped into designs or shapes.....	676
Caps:		Embossed.....	665
Blasting.....	728	Not specially provided for.....	664
Bottle, of metal.....	295	Paper.....	667
Cotton.....	527	Perforated for stitching mottoes.....	682
Patent ear.....	497	Portfolios.....	1437
Percussion.....	728	Wrappings.....	1210
Not hats of fur.....	745	Cardcases:	
Wool—		Articles of utility.....	760
Knitted.....	582	Jewelry.....	752
Ornamented.....	580	Leather.....	805
Fez.....	582	Special provision for act of 1883.....	1218

	Page.		Page.
Card-cloth flax.....	550	Carvol, caraway oil.....	76
Card-clothing.....	225, 226, 296	Casein.....	1028
Card-flax waste.....	1076, 1077	Case goods, shortage in.....	8
Card game, "Boy Scouts".....	676	Casement cloth.....	502
Card wire.....	213	Cases:	
Carded waste.....	1192	Allowance of tare for.....	1666
Cards:		Barometer, usual coverings.....	1445
Advertising, with pictures die cut.....	671, 677	Chocolate cigarette.....	657
Altar as regalia.....	1124	Cigar, of leather.....	860
Business.....	54, 667	Cigarette, metal.....	857
Christmas.....	664	Egg, as packing boxes.....	320
Composed wholly or in chief value of paper.....	652	Flash-light.....	306
Drawing, leather, etc., metal.....	810	Leather fitted.....	805
Hair-drawing.....	312	Needles.....	252, 253, 254, 255, 1444
Hand-painted.....	843, 847	Musical instrument.....	834
Jacquard, designs.....	664	Opera glass.....	167
Perforated.....	836	Piano, painted.....	852
Playing.....	651, 676	Pipe—smoker's articles.....	859
Printing.....	667	Usual coverings.....	1445
Pull.....	656	Public—store.....	1635
Show, lithographed.....	658, 679	Toilet—furnished.....	879, 883
Visiting.....	667	Violin.....	838, 1443, 1445
Wool.....	883	Watch.....	293
Carica papaya—dried pawpaw juice.....	55, 56, 57, 981	Cashmere—	
Carmel-Malz.....	359	Gloves and hisoery knit fabric.....	568, 570
Carnauba—wax substitute.....	1150	Goat hair.....	593
Carpenters' bench knives.....	243, 244	Cash registers.....	958, 1053
Carpet lining, paper.....	680	Casks:	
Carpets and carpeting:		Allowance of tare for.....	1666
Cork.....	537	American, exported and returned.....	907, 908, 909
Flax.....	535	Containing china, not tublar tanks.....	233
For churches.....	1122	Empty.....	320
Hemp.....	536	Wooden, as usual containers.....	1431
Japanese.....	536	Cassava cakes and wafers.....	1140
Jute.....	535, 536	Cassia—	
Part of wool or cotton, n. s. p. f.....	588	And cassiavera.....	435, 436
Wool.....	585-587	Artificial oil of.....	76
Woven whole for rooms.....	587, 588	Buds.....	435
Yarn.....	587	Flowers, dried.....	981
Carpeting, felt.....	590	Oil.....	74, 86
Carriage—		Cassiterite or black oxide of tin.....	1146
Aprons of woolen cloth.....	569	Cassock for choirs as regalia.....	1122
Bolts and step.....	225	Cast—	
Laces.....	773	Bronze bust not statuary.....	849, 1513
Whips.....	334	Hollow ware.....	226, 227
Carriages—		Cast-iron—	
As household effects.....	953, 954	Articles.....	226-230
Baby, not personal effects.....	1153	Statuary.....	228, 873
For lace-making machines.....	302	Cast of sculpture, plaster of Paris.....	1123
Not personal effects.....	1159	Castanets and batons.....	834
Special provision for, act of 1883.....	1218	Castel branco—wool.....	1182
Carrierslien for duties advanced.....	1647	Castile soap.....	100, 1672
Carrot seed.....	389	Castings:	
Cartage charges.....	1383, 1638	Defined.....	228, 230
Cartridges and shells for.....	728	Iron.....	226-230
Car tires.....	262	Malleable iron.....	891
Car-truck channels, iron or steel.....	188	Steel, molded.....	202, 203, 204
Car wheels, worn-out.....	923	Castometers.....	1089
Carved—		Castor—	
Figures of wood.....	1127	Beans or seeds.....	389
Ivory.....	840	Or castoreum.....	959
Limestone articles.....	844	Oil.....	70, 1008
Marble vase.....	845	In alagarin assistant.....	73
Woodwork for chapel interior.....	1203	In capsules as a medicinal preparation.....	72
Carving knives.....	243, 244	Soaps containing.....	70
Carvings of wood.....	1127	Seed, allowance for impurities.....	391

	Page.		Page.
Cast of sculpture.....	828, 1121, 1126	Cellulose.....	51
Casualty, refund of duty on merchandise injured by.....	1611-1616	Ester, enamelite.....	53
Catalogue covers, lithographic.....	660, 661	Cement, n. s. p. f.....	112
Catgut:		Bicycle.....	113
Colored, for tennis rackets.....	960, 961	Brazilian.....	113, 1212
For surgical purposes.....	819	Copper.....	973
Manufactures of.....	818	Dentists'.....	20, 112, 113
Rope.....	820, 961	Fire.....	113
Strings.....	819	Keene's.....	112, 113
Unmanufactured.....	960, 961	Lime.....	112
Catheters, cotton or silk.....	525, 527	Roman, Portland, and other hydraulic.....	113, 961
Cat's-eye glass.....	157	Statuettes.....	119
Catsup, walnut.....	377	Censer as regalia.....	1124
Cattle:		Centerpoids not regalia.....	1124
Driven across boundary for pasturage....	898,	Ceramic colors.....	96
900, 901, 908		Ceramics, u. s. p. f.....	94
Duty on.....	1134	Cerium ore or cerite.....	962
Hair—		Certified invoices.....	1236-1247
And cotton goods, cotton chief value.....	571	Bonds for production of.....	1242-1247
Cloth.....	563, 567	Collection of increased duty on.....	1242, 1243, 1244
Felt, as cloth.....	565	Certificates:	
Rope.....	874	Appraising officers'.....	1346
Hides—		Chambers of commerce.....	1374
Raw or uncured, dry or salted... ..	1014, 1015	Cost of manufacture on consigned good... ..	1299
Wearing apparel of.....	740	Depreciation, should be attached to the consular invoice.....	1623, 1628
Meat, importation of.....	1545, 1546	Exportation.....	910
Straying across border, not subject to forfeiture.....	1258	Certification of invoices by consul's clerk... ..	1241
Cauliflower—		Chaff, oat.....	360
In brine.....	370, 372, 374	Chain or chains:	
Seed.....	1107	Iron or steel.....	230, 231
Caustic—		Rope, curb, or cable not over $\frac{1}{2}$ inch in diameter.....	753
Potash.....	1094	Of wooden beads.....	688
Soda.....	102, 103, 104	Chain-making machines.....	297
For miners' rescue appliances.....	1052	Chains—	
Caviar:		As jewelry.....	752
Fresh.....	399	Beaded.....	686, 688
In tins.....	402	Broken.....	1024
Cayenne pepper.....	435	In lengths.....	755, 761
Cedar:		Rope.....	765
As cabinet wood.....	315, 316, 1165, 1174	Rosary.....	687
Boxes as smokers' articles.....	858	Shot.....	313
Fence posts.....	1172	Sprocket.....	231
Logs.....	319, 1177	Vest.....	766
Paving posts.....	319	Watch.....	766
Piling.....	1168	Chair—	
Poles, peeled.....	319	Cane.....	323, 324
Red, canoe.....	1178	Covers.....	1127
Shingles.....	1173	Parts.....	333
Spanish.....	315, 317	Reeds, rattan.....	1178
Wharf timber.....	1173	Chairs:	
Cedrat oil.....	74	Bentwood.....	336
Cedrus deodara, evergreen seedlings.....	1108	Upholstered in antique tapestry.....	1206
Celeriac seeds.....	393	Wheel.....	1153
Celery—		Chalcedony, manufactures of, n. s. p. f.....	178
Salt.....	879	Chalk:	
Seed.....	932, 935, 1107	Artificially precipitated.....	32
Cellophane.....	61	Billiard.....	33, 63
Celluloid.....	51	Crude, not ground, bolted, or precipitated.....	962
Articles in chief value of.....	52, 53	French.....	104, 105, 106
Bracelets.....	757	Ground or bolted.....	93
Crochet needles.....	254	In cubes, sticks, or disks.....	32
Labels for plants.....	1089	Precipitated.....	32
Martingale rings and loops.....	1030	Red.....	32
Toys composed wholly or in chief value of.....	717	Slag.....	113
		Tailor's.....	33, 106

	Page.		Page.
Chamois skins.....	804, 805	Charms:	
Champagne.....	447, 448	China.....	122, 123
Bottles containing.....	447, 451	Jewelry.....	752
Imitation.....	446	Stoneware.....	119, 120
Reciprocity.....	1510, 1514, 1517	Charts:	
Cider.....	378	Anatomical.....	660
Chandeliers:		Defined.....	672
Glass pendants for.....	148	Mechanical.....	674
Not regalia.....	1123	Not specially provided for.....	669
Change—		Printed more than 20 years.....	938
In rate of duty while goods are in bond..	1390,	Chartreuse.....	1521
Of classification.....	1591	Chatterton's compound.....	824
Of language signifies change of intent....	1719	Checks, blank.....	915
Of tariff acts.....	1097	Checkers, pearl draughts.....	710
Channels, iron or steel.....	1593	Cheese:	
Charcoal—	188	Allowance for coating.....	1668
Crayons n. s. p. f.....	94	And substitutes for.....	365
Iron.....	187	Boxes, empty.....	320
Not suitable for use, as pigment.....	902, 963	Knives.....	243, 244
Charges:		Weight of.....	1667, 1668
Accrued after goods were packed.....	1440	Chemical—	
Added by collector.....	1408	Compounds.....	17
Added to invoice by consul.....	33, 35	Containing alcohol.....	37
Apportionment of.....	1291	In individual packages.....	37
Appraisalment of.....	240, 1436, 1444	Glassware.....	141-151
Appraisalment of.....	1270, 1272, 1434, 1445, 1446	Regulations for scientific apparatus..	1083
Assessment of duty on.....	1270	Mixtures.....	17-19
Commissions, not separately stated on		Containing alcohol.....	33
invoice.....	1442	Preparations.....	17
Corking and wiring bottles.....	464	Salts.....	17, 19-24, 33, 39
Dutiable, added by appraiser.....	1283	Wood pulp, unbleached.....	1182
Dutiable, omission of.....	1284	Chenille—	
Dutiability of.....	137, 1423-1454	Bath mats.....	521
Extraordinary services of inspectors.....	1500	Carpets.....	585
For "bringing into godowns".....	1440	Cords.....	628
For finishing and adornment.....	1445	Cotton.....	502
For inland freight not specified in in-		Fasciators cotton.....	504
voices.....	1440	Silk.....	606-607
For measuring imported laces.....	1461	Yarn, silk.....	605
For overtime of discharging officers.....	1460	Cheroots of tobacco.....	355
For pressing and weighing wool		Cherry—	
from Tientsin, at Shanghai.....	1441	Culls, lumber.....	318
For ticketing, taping, and tying.....	1447	Juice.....	461, 463
For services of chemist on reexamination		Laurel water.....	18
of opium.....	1459	Lumber.....	318
For storage, labor, and drayage.....	1460	Stocks, cuttings, or seedlings of.....	380
For unloading vessels at specially desig-		Trees, Merisier.....	387
nated place.....	1638	Water, medicinal preparation.....	84
Freight, not part of appraised value.....	1293	Cherries—	
Inspector's, for discharging vessel.....	1460	Green or ripe.....	404-407, 998
Nondutiable—		In alcohol.....	409
Included in entered value.....	1288	In brine.....	409, 997, 998
Not specified in invoice.....	1286	In Marischino.....	407, 412, 413
Not appearing in invoice.....	1487	Preserved.....	409
On goods detained in quarantine.....	1442	Sulphured.....	407, 409, 997
On invoice, failure to add.....	1280	Chess balls.....	709
On merchandise packed in glass bottles..	1438	Chessmen.....	709
On merchandise entered without an in-		Chestnut bark, extract of.....	1136
voice.....	1461	Chests, tare for.....	1666
On warehoused lumber.....	1460	Chewing gum.....	346
Packing—		Chiampo stone.....	175
Appraiser's action on.....	1272	Chianto, wine.....	456
Value of.....	1269	Chicle.....	62, 63
Storage and cartage.....	1638	Chicory—	
Transportation, transshipment.....	1453	Root.....	429, 433
Charlton white, paint, containing zinc.....	98	Seed.....	393

	Page.		Page.
Chief use.....	1719	Chinese—Continued.	
Chief value, rule for ascertaining.....	169	Vegetables.....	373, 395
Chiffon:		Wax.....	1151
Articles made of.....	775	Wine.....	443, 444
Veils and veiling.....	779, 798	Chinois in brine.....	998
Children's—		Chinisol.....	19
Books with an illuminated lithographic cover.....	656, 657	Chintz as cotton cloth.....	482
Drinking cups.....	721	Chip—	
Gloves, wholly or in chief value of leather.....	813, 814	Baskets.....	328, 329
Paint boxes.....	710	Braid.....	693
Rings.....	763	Manufactures of.....	821
Workboxes.....	721	Chips of sandalwood.....	56
Chillies, red pepper.....	438	Chisels.....	242
Chime of bells, not regalia.....	1123	Chloralamide.....	23
Chimney pieces, slate.....	184	Chloral hydrate.....	34, 39, 40
Chimneys—		Chlorate of soda.....	102, 103
• Glass.....	141	Chloride:	
Lava stone for.....	182	Benzyl.....	49
China:		Ethyl.....	57
Artificial flowers made of.....	127	Lime.....	30
Balls for sign work.....	127	Magnesia.....	22
Brown.....	125	Magnesium.....	23
Buttons.....	704	Silver.....	99, 100
Clay.....	115	Zinc.....	23, 94
Tare on.....	1668	Chlorodine, Brown's.....	36
Decorated.....	123	Chloroform.....	40, 41
Dolls, composed of.....	718	Chlorophyll.....	35
Goatskin mats and rugs.....	741	Extract of.....	59, 60
Grass.....	1005	Chocolate.....	429, 430
Lamb's wool.....	1182	And cocons distinguished.....	431
Ornamented tables.....	336	Confectionery.....	430
Plates—		Coverings other than plain wooden.....	430, 431
“Cenco”.....	123	Pastry, confectionery.....	364
Decorated by American artist abroad.....	126	Rate of duty on, method of determining.....	431
Separately boxed, usual coverings.....	1447	Choir stalls, not regalia.....	1122
Sheepskins, unselected.....	1117	Chopping blocks.....	1167
Straw matting.....	533	Chowchow—	
Sugar.....	1539	As a pickle.....	407
Wares.....	122-127	Fruits preserved in sugar.....	410
Chinese—		Christmas—	
Bacon.....	1045	Cards and envelopes.....	664
Birds' nests.....	874	Tree ornaments.....	713, 717
Blue.....	87	Trees.....	1057
Bombs.....	724	Seals.....	655
Camels'-hair noils.....	1193	Chromate of—	
Citizens as sureties in Hawaii.....	1684	Iron, or chromic ore.....	964
Coins.....	972	Soda.....	102, 103
Drugs.....	55	Zinc.....	98
Export tax not dutiable.....	1440	Chromatic pitch pipes.....	837
Fruit candy.....	407	Chrome, or chromium metal.....	185
Goatskins.....	747	Chrome—	
Gowns.....	1159	Alum.....	20
Joss, not regalia.....	1122	Brick.....	107
Medicine, deerhorn.....	18	Colors.....	98
Paper money.....	649	Iron.....	186
Persons, importation of opium by, prohibited.....	80	Paper.....	652
Playing cards.....	651, 676	Green.....	99, 90
Pottery.....	1209	Yellow.....	89
Sausages.....	1045	Chromic acid.....	488, 889
Shoes.....	1035, 1036	Chromium—	
Slippers, straw chief value.....	826	Colors.....	89
White, as oxide of zinc.....	98	Flourine.....	23
Testaments.....	947	Hydroxid of.....	964
		Metal.....	185
		Oxide of.....	89
		Chromolithographs—decalcomanias.....	661

	Page.		Page.
Chronometers, box or ship, and parts of	288, 289	Claims:	
Chrysarobin	18	Against the United States for salvage	1615
Drug advanced	56	Alternative, in protests	1376
Chrysolite, manufactures of	178	For allowance—	
Chucks, metal	301	Meaning of "Landing"	1468
Church—		Notice—proof	1465
Bell, old	1207	For damage allowance after duties have	
Regalia and statuary for	1121-1128	been paid	1478
Churns, butter	301	For deficiency in weight	1673
Chutney, fruit preserved in sugar	410	For greater discount than that on invoice	1350
Cibanon brown, dye derived from alizarin	895	In protest	1400, 1403
Cider	378	Of United States against estates of in-	
Cigar—		solvent debtors	1680
Bands, labels, and flaps, composed		Clams, ground, in tins	1113
wholly or in chief value of paper	652	Clandestinely introduced—smuggling	1260
Cases	752, 857	Clapboards	1164
Cutters	752, 765, 878	Cedar	1172
Fans, toys	711	Planed, produced in New Brunswick	1220
Firecracker, shaped like	715	Clarinet—	
Holders, jewelry	752	Cleaners, brushes	699
Lighters, pocket	755, 878	Reed cases	835
Cigars, tobacco	355	Clasp knives	236, 237
From the Philippine Islands	1526, 1530, 1711	Clasps:	
Importation by mail prohibited	356, 1530	For bags	306
Not exempt as personal effects	1153	Iron or steel	273
In packages of less than 3,000	356, 1530	Necklace	756, 762
Packing of	356	Classical works of literature	943
Samples for free distribution	356	Classification—	
Stamp tax on	356, 1443	By Board of General Appraisers at rate	
Cigarette—		not claimed in protest	1401
Books	856	By collector at highest rate applicable	208
Book covers	856	By sample	1720
Holders and cases	752	Claimed by protest must be proved	1332
Paper	856	Of merchandise not in public stores	1718
Cigarettes, of tobacco	355	Of nonenumerated articles	886
From the Philippine Islands	1526, 1530, 1711	Rules of	1719
Importation of by mail	356, 1530	Clay:	
Weights of	356	Common blue	964
Cinchona bark	929	Crucibles for colleges	1087
Salts of	1101	In sacks	965
Cinctures and side rosaries as regalia	1122	Modeling	886, 870, 874
Cinematograph	951	Pipe	116
Cinnamon—		Pipe bowls and pipestems, separately	
And cinnamon chips	435, 436	packed	858
Oil	74	Unwrought	964
Cipollina	394, 395	Claymore, not regalia	1127
Circassian walnut planks	316	Clays, not specially provided for	115
Circular saws	260	Cleaned rice	361, 362
Circus animals	913	Cleaning cloths, metal thread	272
Cirine, a mixture of clay and oil	875	Clearance of pleasure yachts	1225
Cisco or lake herring	994	Clear shelled almonds	421
Citation of importers to appear before col-		Clerical errors	1346, 1438, 1484, 1486
lectors of customs	1421, 1422	Addition on invoice not on entry	1287, 1288
Citizenship of—		Entry on wrong invoice	1484
Corporation importing animals for breed-		Excessive valuation in invoice	1487
ing purposes	898, 900	Failure to add invoice charges	1289
Married woman	1080	In invoice discovered before entry	1286
Citral, concentrated lemon oil	76	In original consular invoice	1486
Citrate of lime	66	In pro forma invoice	1280
Citron:		Manifest	1265, 1268,
Candied	420		1271, 1272, 1273, 1274, 1285, 1291, 1480
Extracts	36	Omission of dutiable charges	1284
Peel, preserved, candied, or dried	419	Shipment of wrong goods not	1279
Citronella	74, 1551	Cliff stone	1129
Oil	74	Clinical thermometers	143, 1090
Civet	84, 85	Clinometers	1089
Oil	74		

	Page.		Page.
Clippers, hair.....	239, 242	Cloth—Continued.	
Clippings:		Raffia.....	825
Cotton.....	1075	Ramie.....	556
From new copper.....	973, 974	Rubber-faced, used in making card clothing.....	823
Clock—		Sateen.....	878
Cases—		Shrinkage, cost.....	1426
Bronze and china, metal chief value..	292	Silk.....	617-623
China, bisque, and stone ware.....	119,	Tracing.....	489
120, 122, 123, 125		Waterproof.....	491, 566, 570, 824
Marble, chief value.....	291	Wool chief value.....	563
Not specially provided for.....	178	Clothes baskets, willow.....	328
Onyx.....	180	Clothing, ready-made—	
Faces or dials, copper chief value.....	293	Cotton.....	495-499
Jewels.....	292	Fur.....	740-747
Movements.....	288, 289	Flax, hemp, or ramie.....	540
Wire.....	212, 213	In part of braid.....	580, 581, 780
Clocks—		Silk.....	614-617
And parts.....	288, 289	Wool.....	578-584
China cases and metal movements.....	127, 290	Cloths:	
Musical.....	292	Dust, cotton.....	524
Parts of, glass.....	154	Cattle hair.....	563
Ship.....	291	Metal-thread cleaning.....	272
So-called ball.....	290	Mop, cotton.....	520
Traveling.....	293	Polishing, cotton.....	520
Clo-clo braids.....	779	Wash.....	520
Cloisone:		Wire.....	218
Enameled articles as jewelry.....	763	Wool.....	563
Wares.....	252	Woolen, cut into lengths.....	1445
Cloth:		Worsted.....	571
Angora and alpaca hair.....	596	Clove stems.....	435, 436
Automobile.....	576	Clover seed.....	1110
Boards.....	915	Cloves.....	435, 436
Bolting—		Oil of.....	74
Composed of silk.....	936	Clown sets, toy.....	718
Copper wire gauze.....	217	Clumps, hyacinth.....	385
Brattice jute.....	544, 545	Clusters, artificial flowers.....	735
Camel's-hair press.....	563, 567	Clutch leathers.....	1032
Canton wool welt.....	576	Coach:	
Casement.....	502	Furniture.....	1029
Cattle hair.....	563, 565	Hardware.....	1029
Cotton—		Laces.....	773
And paper.....	649	Coal:	
And silk.....	492	Anthracite, bituminous, culm, slack. shale, and coke.....	965-969, 1460
And wool.....	527	And culm, mixed.....	969
Articles made from.....	524, 526	Bituminous.....	1578
Bandage.....	480	For steamships.....	1577
Colored.....	480, 482	Retained on ship.....	1662
Cut to shape.....	525	Stores not sea stores.....	1661
Figured with cords.....	481	Stores of American vessels.....	967
Mercerized selvages.....	480	Semianthracite.....	968
Not countable.....	525	Used as ballast.....	1663
Part jute.....	525	Coal tar:	
Woven figured.....	480	All products of, not colors or dyes, n. s. p. f. 44-49	
Cravenette.....	589	Colors or dyes.....	41-44
Filtering.....	490	Crude.....	969, 970
Fiber.....	556	Pitch of.....	969, 970
From waste silk.....	623	Products known as anilin oil, etc., not medicinal.....	9-51
Gloria.....	628	Coasting license, unauthorized issuance of... 1591	
Grass.....	667, 694	Coastwise steamer.....	1641
Horsehair.....	563	Coat hangers, cotton strips.....	513
Jute hop.....	544	Coat linings, Angora goat.....	597
Mohair.....	565, 597	Coatings, Thibet cloth.....	572
Cow hair and cotton, for caps.....	885		
Old gunny.....	1075		
Palm fiber.....	826		
Press cloth, camel's hair.....	563		

Coated—	Page.	Coin—Continued.	Page.
Wire.....	216	Foreign.....	1616
Articles.....	216	Holders.....	752, 760
Wrapping paper.....	666	Purses.....	1363
Coats:		Coins:	
Street walking coats for clergymen, not regalia.....	1123	Chinese.....	972
Wool, fur lined.....	744	Copper.....	972
Cobalt and cobalt ore.....	970	Counterfeit, prohibited importation.....	1693
Oxide of.....	51	Gold, silver, copper, or other metal.....	972
Coca leaves.....	65	Goods, wares, and merchandise within the meaning of the customs laws.....	1643
Cocaine—		Standard, Director of the Mint to deter- mine what are.....	1622
And salts of.....	77	Old.....	1214
Crude.....	81	Swedish.....	972
Muriate of.....	81	Coir—	
Not on manifest of vessel.....	1648	And coir yarn.....	972
Phenate.....	23	Hawyers.....	556
Cocculus indicus.....	970	Collar—	
Cochineal.....	970	Supporters.....	215, 621, 759
Coco fiber.....	971	Buttons and parts of.....	274, 702, 703, 752
Cocoa.....	429, 430	Collard seed.....	389
And chocolate, difference between.....	431	Coke.....	963, 968
Butter or butterine.....	432, 433	Oven linings, fire brick.....	107
Delangreiner's food.....	430	Cola nuts.....	424
Fiber mats.....	832, 833	Colchicum seeds.....	985
Fibers, crude.....	971	Colcothar or oxide of iron.....	90
Oatmeal, Hausen's.....	431	Collapsible—	
Waste.....	971	Lanterns.....	713
Coconut—		Tubes.....	295
Meat or copra—		Collarettes, appliquéd.....	791
Broken, not shredded or prepared... ..	1062	Collars:	
Desiccated, shredded, or prepared... ..	419	Cotton, lace, or embroidered.....	540
Oil.....	1064	In the piece, ladies'.....	615
Refined.....	432, 1067	Lace.....	795
Cocoanuts in the shell.....	1062	Shirt—	
Coccolio as cocoa butter.....	432	Cotton.....	495
Cod—		Linen.....	539
Oil.....	1064, 1072	Women's embroidered.....	497
Roe.....	987	Wearing apparel.....	791
Tongues and sounds.....	934	Collector:	
Codfish:		Appeal from decisions of.....	1346
Cream of.....	402	Authority of to—	
Dried.....	990	Add charges not on invoice.....	1372
Portion of bones removed.....	990	Bind the Government.....	1702
Cod-liver oil.....	1064	Liquidate on more than the entered or appraised value.....	1256
De Jough's, a medicinal preparation.....	23	Instruct deputy.....	1346
Codeine, alkaloid of opium.....	80	Can not waive requirements of protest... ..	1402
Coddington—		Decision of, final if not appealed from.....	1346
Lenses.....	1088	Failure of to reliquidate warehouse entry ..	1390
Loupes.....	167	Powers of—	
Code books.....	944	Has no power to appraise merchan- dise.....	1302, 1307
Codes, telegraphic.....	940	To reliquidate within one year.....	1346
Coeruleins, coal-tar dye.....	895	Liability of, for—	
Coffee.....	971	Act of predecessor.....	1619
Decaffeinized.....	971	Delivery without bill of lading.....	1232
Essence.....	433	Must prove legality of assessment.....	1403
Extract.....	433	Not liable for decisions as to classification or charges.....	1490, 1619
Porto Rican.....	971, 1713	Rights where importer abandons appeal to reappraisement.....	1335
Reciprocity provision for.....	1511, 1512, 1521	Unlawful detention of merchandise by... ..	1235
Roasted and ground.....	972	Collets:	
Substitutes, n. s. p. f.....	433	Cotton.....	511
Cogged ingots.....	262, 1128	Flax.....	517
Cogwheels, cast-iron.....	228		
Coiled wire.....	214		
Colls, aluminum.....	264		
Coin:			
Articles, copper.....	303		

	Page.		Page.
Collodion.....	51	Commercial cyanide of potassium.....	1094
Business cards.....	54	Commercial meaning of tariff terms.....	1721
Cotton packed in water, tare on.....	1673	Commercial designation.....	515
Finished articles of.....	54	Glass disks for optical instruments.....	1002
Sheets.....	53	None to indicate that violins are toys....	721
Collotype printing press.....	303	Embroidery cotton, chief use does not de-	
Colocynths, peeled.....	982	termine.....	471
Cologne, perfumery.....	81, 82	Must be shown to be used generally in the	
Color—		trade.....	462
Bases, coal-tar.....	45	Rules for determining.....	1720, 1725
Crocus as.....	98	Scrap tobacco.....	354
For candles.....	41	Words not used in commercial sense.....	410
Prints.....	672	Commission:	
Tiver in powder as.....	97	Added by appraiser.....	1301, 1441
Colored:		Added by importer.....	1275
A descriptive term.....	482	Addition of, to make market value....	1269, 1348
Engravings.....	675	Defined.....	1240, 1442
Glass.....	773	Disallowed to make market value....	1292, 1439
Sand.....	1130	Included—	
Thread in a fabric.....	785	In appraised value.....	1277
Coloring:		In entered value.....	1284, 1439
Brandy.....	444	Under duress.....	1271, 1276, 1277, 1282
For brandy, wine, beer, or other liquors..	54	On consigned goods.....	1440
Food.....	868	Not specified on invoice.....	1442
Colors:		Not to be stated in invoice unless paid....	1238
Alizarin.....	895	Purchasing agent's not dutiable.....	1430, 1435
Artists', n. s. p. f.....	94	Selling dutiable.....	1271
Ceramic.....	96	So-called, dutiable.....	1442
Collins oxide as.....	96	Common goat hair.....	1013
Containing quicksilver.....	94, 95	Common knowledge may be used in classifi-	
In tubes.....	98, 99	cation.....	1725
Not containing quicksilver.....	97	Common meaning of a statute.....	1632
Not specially provided for.....	94	Communion—	
Oil and water, in pans and tubes.....	98	rails, not regalia.....	1122
Unwrought earth as.....	96	Services, as regalia.....	1122, 1124
Colt, dependent on mare.....	357	Compass:	
Columns:		Jewels.....	292
Iron or steel.....	188	Steamship, as equipment.....	1650
Onyx.....	180	Compasses:	
Colza or rapeseed oil.....	72	As manufactures of metal.....	306
Combed—		Drawing, for public schools.....	1087
Silks.....	601	Not free as scientific instruments.....	1088
Wool or tops.....	561	Small, cheap, as manufactures of metal....	759
Combination—		Surveyors', as manufactures of metal....	168
Articles.....	285	Watch chain as jewelry.....	756
Cane and umbrella.....	862	Competency of—	
Guns.....	1158	Merchant appraisers.....	1352
Knives and forks.....	239	Witness—testimony.....	1710
Letter opener and knife.....	239	Compendium of games.....	711
Pocket pen, pencil, etc.....	284, 756	Compliance with R. S. 2901 not mandatory..	1630
Penholders.....	284, 285	Component material of chief value, rules for	
Pocket memorandum books.....	673	ascertaining.....	506, 685, 878, 880, 1035, 1374, 1731
Shotguns and rifles.....	248, 249	Composed of, definition of term.....	129, 697
Undergarments, cotton.....	509, 510	Composition—	
Combs:		Buttons.....	707
Celluloid.....	53	Metal.....	268, 882, 972, 1558
Chief value hard rubber.....	823	Sheets.....	973
Gallilith.....	823	Compositions:	
Horn and metal.....	821	Medical, manufactured of domestic spirits	
Horse, curry.....	824	for exportation.....	1569
Jewelry.....	752	Of glass or paste, not set.....	169
In leather cases.....	1445	Compounds or preparations of distilled spirits	443
Comfits.....	404, 405	Coöbligors, release of one.....	1695
Chinese fruit candy.....	407	Compounds:	
Marrons in sirup.....	413	Chemical and medicinal.....	17
Satsuina age.....	408	Containing alcohol.....	33
Comfortables, as manufactures of silk.....	778	In packages of 2½ pounds.....	37

Compounds—Continued.	Page.	Constructive—	Page.
Glycerophosphoric acid.....	39	Allowance, no.....	449, 454, 455
Antimony.....	265	Charges.....	1638
Of caffeine.....	30	Constructively in bonded warehouse.....	1616
Of distilled spirits.....	443	Consular—	
Of pyroxlin.....	51	Certification of invoice, date of.....	1618, 1621
Compromise settlement binding on claimant.....	1449	Currency certificates of depreciation.....	1622, 1623, 1626, 1627
Concentrated—		Invoices—	
And concrete molasses.....	337, 338, 340	Required on entry.....	1242-1247
Melada.....	337, 338, 340	What to contain.....	1238
"Concrete"—		Consular-seal shipments.....	1689
Essence of lemon.....	868	Consuls', authority of, to certify invoices.....	1241
Muguet de mai.....	85	Containers of—	
Condiments, sauces.....	375	Acids.....	911
Conduits, clay and carborundum.....	127	Carbonic-acid gas.....	1425
Condenser lenses.....	164	Gas, liquids, or other material.....	232
Condensers.....	221	Liquids and semiliquids.....	1430
Abbe.....	167	Merchandise paying specific duties.....	1448
Condor and eagle wings, in crude state.....	735	Metal, for artificial flies.....	256
Cones, pine.....	424, 425	Molasses.....	1448
Confections and sugar candies.....	345, 346	Vanity articles and preparations.....	755
Confessionals, not regalia.....	1122	Contingent fee.....	1361
Confidential reports, Secretary of the Treasury, to determine what are.....	1323	Contract authorizing suit for recovery of duties.....	1702
Conformators, hatters'.....	310	Convict labor, products of.....	1548
Confusion of goods.....	1591	Cooks' knives.....	243, 244
Congress canvas, etamines.....	483	Copper:	
Coney skins, plucked.....	1000	Arsen.....	281
Confectionery:		Black and coarse.....	973, 974
Boxes of metal, unusual coverings.....	1445	Bottoms.....	268, 269
Chocolate.....	430	Braziers'.....	268, 269
Coloring of coal tar origin.....	44	Coins.....	972
Immediate covering for, dutiable.....	346, 430	Coin articles.....	309
Not specially provided for.....	346-348	Cement.....	973, 974
Confine, an alcoholic medicinal preparation.....	23	Cylinders produced by electrolysis.....	269
Conium seeds.....	985	Foil.....	270
Connecting rods.....	195, 203, 204	For construction of vessels.....	1558
Consignee:		Hinges.....	224
Declaration as owner.....	1233, 1260	In plates, bars, ingots, or pigs.....	973, 974
Delivery to, without bill of lading.....	1231	In pyrites ore.....	1133
Insolvent, entry by assignee or receiver.....	1233	Matte.....	974, 975
Liability of for additional duty.....	1230, 1231, 1285, 1376	Medal.....	1046
Of imported merchandise, deemed owner.....	1229	Miniatures.....	845
Unauthorized shipments not liable.....	1230	Ore.....	294
Consigned goods:		Concentrated.....	975
Addition to make market value.....	1283, 1288, 1290	Fire assay.....	1133
Certificate of cost for.....	1299	Regulus of.....	973, 974
Ownership of, in time of war.....	1235	Precipitate.....	277
What are.....	1287	Pipes.....	268-270
Consignments, divided or consolidated.....	1690	Plates.....	268-270
Consignor, fraud of.....	1258	Covered with metal.....	197
Consolidation of I. T. importations.....	1689	Engraved.....	258
Conspiracy:		Rods.....	268, 269
Concealment of goods.....	1740	Scale.....	973-975
To defraud.....	1290, 1265	Sheathing.....	268, 269
Construction:		Sheets.....	268-270
Context as aid to.....	383	Covered with metal.....	197
Protest—companion protest.....	1386	Strips.....	268, 269
Proviso.....	1619	Tubing, flexible.....	234
Construction of—		Tubes.....	270
Repealing clause.....	1733	Wire gauze bolting cloth.....	217
Repugnant provisions.....	163, 887	Wire, manufactures of.....	212
Tariff acts.....	1723	Copperas, or sulphate of iron.....	975
Statutes.....	1660	Copra, or dried and broken coconut.....	1062, 1063
Treaties.....	1688	Copy—replica—reproduction defined.....	342

	Page.		Page.
Copying—		Coriander seed.....	1107
Paper.....	640, 641	Coripol, a grease used for stuffing leather....	1008
Sheets, cotton.....	527	Cork:	
Copyrighted books.....	1601	Artificial, or cork substitutes.....	708
Coquille glasses.....	163, 165, 1002	Bark or corkwood.....	708, 975
Coral—		Carpet.....	537-539
Beads, not threaded or strung.....	688	Disks.....	708-709
Cameo.....	773	Floats.....	256, 257
Cut but not set.....	766	Ground, waste.....	709
Cut, manufactured.....	1218	Insoling.....	709
Imitation of.....	768, 771	Openers.....	312
Manufactures of, n. s. p. f.....	178	Squares.....	709
Marine, uncut and unmanufactured.....	975	Stoppers.....	708
Necklaces.....	763	Stopper tubes.....	709
Precious stones.....	770	Substitutes or artificial cork.....	708
With temporary settings, separately packed.....	763	Ventilators.....	709
Cord:		Wafers or washers.....	708
Coronation.....	514, 517, 518, 541	Waste.....	975
Defined.....	514	Corking and wiring charges.....	464
Untwisted.....	514	Corks, for bottled beer, not material used in manufacture of beer.....	1577
Cordage:		Corms, flower.....	382, 385
Hemp, tarred.....	529	Corn:	
Istle.....	529	In the ear.....	976
Manila.....	529	Green, on the cob.....	394
Marline.....	530	Knives.....	239, 241
Sisal grass.....	529	Meal.....	976
Tampico fiber.....	529	Or maize.....	976
Cords—		Mills.....	891
And tassels—		Plasters.....	86
Cotton.....	510, 514	Razors.....	239, 242
Silk.....	611	Salad seed.....	389
For trimming altar.....	1123	Cornelian:	
Wool.....	584	Cut.....	770
And yarns, silk.....	613	Glass canes.....	174
Asbestos, woven.....	820	Manufactures of, n. s. p. f.....	178
Artificial silk.....	629	Cornice and frieze patterns, plasters.....	1055
Beaded.....	690	Cornish stone.....	133, 1051
Cable-laid twine.....	519	Cornwall stone, ground.....	129
Chenille.....	628	Coronation cord.....	514, 517, 518
Cotton.....	511	Corrosive sublimate.....	31
And india rubber.....	541	Corset—	
Cable laid.....	517	Clasps.....	212, 218
Defined.....	543	Covers, cotton, knitted.....	509, 510
Elastic.....	518, 542, 613	Lacings, cotton.....	511, 514
Or other vegetable fiber.....	540	Laces, silk.....	785
Elastic.....	518, 612	Steels.....	212
Fancy silk, metal, and cotton.....	543	Wire.....	212, 213
Flax, hemp, or ramie.....	530, 540	Corsets:	
Plaited jute sash.....	557	Trimmed with lace.....	785, 791
Silk.....	611	Wool, as wearing apparel.....	582
Wool.....	584	Corticine.....	537
Cordial:		Corundum:	
Ginger.....	448	Ground.....	987
Raspberry.....	462	Manufactures of.....	723
Cordials.....	443	Cosmanos, wool shawls.....	581
Containing more than 24 per cent alcohol.....	448	Cosmetics.....	81, 83
Creme de cassis.....	444	Proprietary preparations.....	34
French, reciprocity rate on.....	1517, 1518	Manufactured, of domestic alcohol for exportation.....	1569
In decorated decanters.....	453	Cost—	
Proprietary.....	34	At place of exportation.....	1308
Manufactured from domestic spirits for exportation.....	1569	Of coverings included in dutiable value.....	1443
Cordonnet, silk thread in skeins.....	605	Of cartons and packing not dutiable under act of 1883.....	1449
Cordova, wool.....	1182	Of dyeing, dressing, and packing furskins.....	1449
Corduroys, cotton.....	499		

Cost—Continued.	Page.	Cotton—Continued.	Page.
Of manufacture, certificates of, on con-		Cloth—Continued.	
signed goods.....	1299	Leno, woven.....	487
Of packing to be ascertained by collector.....	1426	Lined envelope paper, cotton cloth	
Of shrinkage of cloth.....	1426	chief value.....	651
Of winding, hanking, and packing worsted		Mercerized, as colored.....	482, 483
yarn.....	1442	Oiled.....	492
Costs:		Oriental stripes.....	485
Against United States, in suits.....	1504	Part jute.....	483, 525
Security for.....	1507	Part silk.....	492
Costumes:		Patterns, lithographed.....	660
Masquerade, on Mardi Gras notregalia....	1123	Silk, figured.....	490, 491
Theatrical tools of trade.....	1097-1100	Terry cloth as.....	501
Cotswold wool.....	1182	Tracing.....	493
Cotton—		Unbleached, with colored figures..	485, 486
And cotton waste.....	976-978	Varying thread count.....	483
Calf-hair goods.....	885	Waterproof.....	489, 493
India-rubber braids.....	789	Window hollandas as.....	493
Leather slippers.....	1035	With mercerized selvages.....	480
Rubber fabrics.....	524	With silk selvage.....	484
Silk mufflers.....	494	Woven, figured.....	480, 486, 487
Wool waste.....	1193	Clothing, ready-made.....	495
Antiseptic medicinal preparation.....	19	Collars, embroidered.....	540
Aprons in the piece.....	496	Collets.....	511
Bagging for.....	925	Combination suits, knitted.....	509
Bandage cloth.....	480	Cord, cable laid.....	517
Bandages.....	512	Cords and tassels.....	510
Bath mats.....	520	Corduroys.....	499
Bandings.....	510	Corset covers, knitted.....	509
Batting.....	520	Corset lacings.....	511
Bed sets, lace.....	523	Corsets, trimmed with lace.....	785
Belting for machinery.....	511-516	Covered boxes.....	644
Beltings.....	510-516	Crash, with colored stripe.....	482
Belts.....	510	Crepe, piece goods.....	627
Bibs in the piece.....	496	Crochet.....	469
Bindings.....	510-516	Crocheted figures.....	785
Blankets.....	520-522	Cuffs.....	495
Bone casings.....	510	Darning.....	469, 471
Boat lacings.....	511	Dimities.....	504
Braces.....	510	Drawers, knitted.....	509
Boleros.....	798	Dress facings, bias.....	499
Borders for window curtains.....	791	Embroidery.....	469
Braids.....	783, 785, 790, 800	In skeins.....	470, 471
Candle wicking.....	511	Mercerized.....	470
Card laps.....	467	On woolen cloth.....	791
Chenille curtains and table covers.....	502	Fabrics for pneumatic tires.....	510
Chintz.....	482	With fast edges.....	510
Clippings.....	1076	Garters.....	510
Cloth.....	472-479	Gauze, narrow pieces of.....	513
Average count of threads.....	488	Gins.....	890
Bleached.....	486, 1089	Gloves—	
Coated.....	489, 490	Embroidered.....	781
Colored.....	480, 482	Knitted.....	506
Countable.....	486	Knitted, part wool.....	507
Crepe de chene.....	487	Men's knitted.....	507
Defined.....	487, 488, 525	Part rubber.....	496
Dotted swiss.....	487	Stitched or embroidered.....	508
Embroidery canvas.....	487	Women's.....	507
Etamines.....	484	Goods, open work.....	802
Extra threads in.....	483, 485	Hat bodies.....	1218
Figured.....	481, 484	Hats, untrimmed.....	496
Filled.....	489-492	Handkerchiefs.....	493
Finished articles of.....	526	Hemmed or hemstitched.....	495
In strips.....	513, 514	In the piece.....	494
Jacquard woven.....	504	Pearl stitched.....	494
Lancaster window-blind.....	490	Hollandas, articles made from.....	491

Cotton—Continued.	Page.	Cotton—Continued.	Page.
Hose—		Upholstery goods.....	502
Embroidered.....	507, 508	Velveteens.....	499
Made on knitting machines.....	504	Velvet and velours.....	499, 501
Shaped by cutting.....	505	Vestings dotted.....	484
Initials.....	787	Vests, knitted.....	509
Italians.....	487	Waste.....	977, 978
Jacquard, figured, manufactures of.....	480, 502	Wearing apparel.....	495-499
Labels.....	511, 517	Window curtains, lace.....	523
Laces.....	800, 803	Window holland.....	489
Lamp wicking.....	511	Yarns.....	467-471
Loom harness.....	511	Yarn coated with cellulose.....	630
Lawns, hemstitched.....	487	Coumarin synthetic.....	46
Lined baskets.....	328	Counterfeit—	
Linters.....	976, 977	Coins, prohibited importation.....	1693
Madras muslin.....	481	Money, payment in no payment.....	1695
Masks.....	831	Countervailing duty—	
Mats.....	588	Accrues if bounty is paid by country	
Manufactures of.....	498, 499, 522, 524-528	from which goods are exported.....	1532-1539
Mop cloths.....	520	Applicable when rate change while goods	
Mufflers.....	495	are in Government custody.....	1070, 1457
Neckties, cotton, silk and metal.....	499	Authority of Secretary of Treasury to	
Nets.....	800	determine.....	1533-1539
Nettings.....	480, 795	On Australian fruits and wool.....	1534
Pants, knitted.....	509	On British spirits.....	1533
Pile fabrics.....	499	Fish from French fisheries.....	1534
Pillowcases.....	520	German grains and flour.....	1534
Pillow shams, lace.....	523	On print paper from Canada.....	636, 637, 1537
Plushes.....	499	On sugar.....	1535-1539
Ribbons, plush or velvet.....	499, 502, 517	On straw from Panama.....	1534
Quilts.....	520, 521	Power of Board of General Appraisers to	
Roping.....	467	determine.....	1539
Roving.....	467, 469	Court-plaster.....	86
Sateen, Jacquard brocade.....	504	Courts—	
Satins, silk striped.....	493	Circuit courts—	
Scarfs in the piece.....	481	Appeal to from decisions of Board of	
Seed.....	1064	General Appraisers.....	1498
Ashes.....	1009	Appeal from to Circuit court of ap-	
Hulls.....	1057	peals.....	1499
Meal.....	871, 1107, 1110	Evidence introduction of in trial	
Oil.....	72, 1064	before.....	1503, 1505
Shelf edgings.....	780	Finding of facts by Board of General	
Shirt bosoms, tucked.....	496	Appraisers reviewable by.....	1328, 1332
Shirtings.....	488	Jurisdiction of, to order collector, pay	
Shirts, with linen collars and cuffs.....	540	attorney's fees.....	1502
Socks, infants'.....	506	Jurisdiction of, to review questions of	
Spindle banding.....	511, 516	value or weight.....	1504
Spool thread of.....	471	Jurisdiction of, to hear customs cases	
Stockings.....	505-509	regardless of amount.....	1505
Stove wicking.....	511	Jurisdiction of, to review questions of	
Suspenders.....	510	law and fact.....	1504
Sweaters, knitted.....	509	Timeliness of appeal to.....	1502, 1503
Strips for coat hangers.....	513	Court of Claims—	
Table damask.....	519	Jurisdiction in customs cases.....	1506
Table covers, fringed.....	503	Court of Customs Appeals—	
Table covers in the piece.....	481	Act establishing.....	1494
Tapes.....	518	Appeals from, to Supreme Court.....	1499, 1505
Tapestries.....	504	Power to remand for additional testi-	
Terry cloth.....	502	mony.....	1501
Thread.....	467, 471	Powers to review findings of fact.....	1501
Ties.....	1016	Rehearings by.....	1501
Tights, knitted.....	509	District court—	
Tracing cloth cut to size.....	491	Jurisdiction of.....	1278, 1384
Trimming, narrow.....	802	Supreme Court—	
Unbleached mercerized cloth.....	481	Appeals to, on constitutional ques-	
Underskirts, knitted.....	509, 510	tions.....	1499
Union suits, knitted.....	509		

Coverings:	Page.	Crayons:	Page.
Air-tight, containers of solids.....	1429	Black chalk refills.....	95
Articles ejusdem generis with cartons.....	1431, 1432	Not specially provided for.....	94
Boxes made of American shooks, value not to be included in value of merchan- dise.....	1437	Pencils.....	854
Bronze powder boxes.....	1437	Toljet.....	84
Chocolate, other than plain wooden.....	431	Cream.....	1047, 1048
Containers of liquids.....	1431, 1433	Nuts.....	422
Display cases for pipes.....	1426	Sour.....	1048
Earthenware teapot, unusual.....	1432	Sterilized in tins.....	1047
Firearms not dutiable.....	1449	Lambskins, pile fabrics.....	570
Garlic-cane baskets.....	1431	Separators.....	958
Musical instruments.....	1442	Separator machinery, steel hoods or bowls for.....	205
Immediate.....	346	Creams for cleaning or polishing.....	28
Candy.....	347	Crème de cassis.....	444
Mushrooms.....	367	Creolin-pearson.....	45, 46
Poultry.....	428	Creosote:	
Leather—		Liquid.....	47
For opera glasses.....	810	Oil.....	969, 970
Watches.....	1445	Soluble.....	47, 1112
Razor blank.....	1438	Creosoted wood paving blocks.....	332
Telescope.....	1445	Crêpe de chene cotton.....	487
Outside boxes for condensed milk.....	1048	Crêpe piece goods.....	627
Tea.....	1429	Crêpe paper.....	641
Steel containers for acids.....	16	Flags.....	641
Stone bottles not.....	1432	Hats.....	713
Usual, are not dutiable.....	1454	Cresol.....	969
Unusual—		Cresotine acid.....	48
Cumulative duty on.....	1423, 1433	Cresylic acid.....	889, 969
Earthenware teapots for tea.....	1432	Cricket bats, willow.....	324
Furniture vans as.....	1438	Criminal intent.....	1261
Iron drums for creosote oil.....	1432	Crinoline:	
Toothpick boxes.....	1432	Cloth, hair.....	750
Trunks containing silk.....	1436	Wire.....	212, 213
Water-tight containing solids.....	1430	Crochet—	
Covers:		Cotton.....	469
Catalogue.....	660	Needles.....	252-255
For boxes.....	659	Crocheted—	
For children's books.....	656	Bands or yokes.....	526
For parchment rolls of Old Testament, as regalia.....	1122	Button covers.....	704
Of wool carpeting.....	590	Handkerchiefs.....	781
Metal screw for jars.....	296	Wool caps.....	582
Paper.....	638, 668	Yokes.....	792
Photograph.....	664	Crockery ware.....	119, 120
Piano.....	1088	Crocus, as a color.....	98
Rubber, bit.....	1036	Crocuses, Bermuda bulbs.....	385
Table.....	1088	Crosnes, a vegetable.....	395
Crackers or mottoes, paper.....	682	Crosscut saws.....	260
Cradles, willow.....	328	Crosses:	
Cranberries.....	404, 405	Gold and silver, jewelry.....	766
In tins.....	406	Silver and wooden, as regalia.....	1122, 1127
In glass jars.....	407	And wreaths mounted on wire.....	737
Crank—		Manufactures of metal.....	740
Axles.....	195	Croton oil.....	1064
Pins.....	203, 204	Croupon.....	1035
Shaft, steel.....	195, 203, 204	Crowbars.....	223
Crape:		Crown—	
Mousseline.....	784	Braids.....	790
Silk mourning.....	624, 796	Glass—	
Crash:		Polished.....	155
Bordered.....	550	Silvered.....	159, 160
Chainbordered.....	551	Unpolished.....	152, 153
Flax.....	549, 551	Patent dryer.....	98
Jute and linen.....	557	Crucible—	
Cravenette cloth.....	569	Band-saw steel.....	204
		Plate steel.....	189
		Steel sheets.....	192

	Page.		Page.
Crucibles.....	233	Curling stones or quoits.....	978
Earthenware.....	117, 123, 124	Currant—	
Kohlenstifte.....	129	Juice.....	463
Plumbago.....	129	Paste.....	410
Porcelain.....	124	Currants:	
Stoneware.....	117, 123	Crushed.....	405
Crucifixes.....	307, 764	Dried.....	417
Carved, wooden.....	1127	Impurities in.....	416
Metal.....	305	Zante and other.....	414
Crude—		Currency:	
Artificial abrasives.....	208	Austrian.....	1617
Beirut bitumen.....	1040	Certificates.....	1616
Carbolic acid.....	889	Circular, legality of.....	1625
Gum resin.....	984	Date of invoice used in computing values	
Soda.....	1118	of.....	1617
Sticks for umbrellas and canes.....	1178	Difference in value of, no additional	
Tartar from Algeria.....	1518	duty.....	1289, 1294
Potassium metal.....	264	Fluctuations of.....	1618
Crushed—		Importer not required to compute value	
Stone.....	128	of.....	1274
Wheat.....	1162	Invoice.....	1627
Crust chamois skins for cleaning.....	804, 805	German.....	1617
Cryolite or kryolith.....	978	Of India.....	1621
Crystal—		Persian, value of.....	1623
Carbonate.....	22	Russian rubles, jurisdiction of general	
Stone bearings.....	179	appraisers.....	1624
Crystals, English, sugar.....	345	Standard and depreciated.....	1622
Crystallized violets, confectionery.....	347	Standard coin.....	1617
Cryptographs, pictures on paper.....	660	Value of at time of exportation.....	1626
Cubarithmes, books.....	943	Curried prawns.....	1113
Cuba:		Currier's—	
Foreign country.....	8	Grease.....	68
Isle of Pines part of.....	9	Knives.....	243, 244
Cuban—		Curry—	
Commercial treaty.....	1523	Combs.....	1031
Internal-revenue tax, addition of not du-		Maple pieces as cabinet wood.....	318, 1171
ress.....	1281	Paste, Mulligatawny.....	376
Sugars.....	1522	Powder.....	978
Tobacco in bond at time treaty became		Curtain—	
effective.....	1524	Goods, madras.....	486
Treaty not in effect until December 27,		Net, Nottingham, taped and not taped..	803
1903.....	1524	Curtains—	
Cubical blocks.....	1446	And draperies, not regalia.....	1123
Cubic nitrate.....	1118	Cotton chenille.....	502
Cucumbers in brine.....	374	Bamboo, straw, wood, or compositions	
Cudbear.....	978	of wood.....	326, 787
Cue tips, leather.....	806	Beaded bamboo.....	686
Cuff buttons, and parts of.....	274	Beaded, composed in chief value of wood..	688
As entreties.....	706	Composed wholly or in chief value of	
Jewelry.....	752	beads.....	683
Cuffs:		Cotton lace.....	800
Cotton.....	495	Glass beaded.....	690
Linen.....	539	Lace window.....	773
Cultivators.....	890	Madras muslin.....	502
Cumarine.....	23	Nut, composed in chief value of beads	
Cumidin.....	49	made from nuts.....	689
Cummin seed.....	1107, 1110	Rice, beaded.....	685, 687
Cumulative duty—		Silk, with cotton fringe.....	621
On gloves.....	815	Tamboured.....	802
On unusual coverings.....	1433	Cushions:	
Cup, silver, prize, not free.....	1047	Artificial fruit.....	730
Cups—		For needle-threading machines.....	514
And saucers, china, as entreties.....	124	Custody of Government, what is.....	1593, 1594, 1595
China.....	122	Customs broker:	
Leather, manufactures of.....	806	As consignee.....	1233
Stoneware.....	119	Liability for duty.....	1231
Curacoa, marasquino.....	444	May transact business in firm name....	1679

	Page.		Page.
Customs regulations—		Damask:	
As showing departmental construction..	1743	Cotton table.....	519, 520
Violation of as a penal offense.....	1743	Linen.....	551
Customs practice, modification of.....	217	Turkey-red table covers.....	520
Cut—		Union table.....	520, 553
Flowers.....	382	Dandelion—	
Nails, iron or steel.....	1058	Roots—	
Papers.....	678	Raw, dried or undried, but un-	
Paste.....	760	ground.....	978, 979
Paste articles.....	171	Prepared.....	433, 434
Cutch.....	58, 1138	Seeds.....	393
From mangrove bark.....	1139-1212	Danish dominions, importations from.....	1737
Cutlery, n. s. p. f.....	237-244	Darby Peak millstones.....	183
Marking of.....	236, 237, 243, 244	Darning cotton.....	469, 471
Cutting size, lithographs.....	660	Date of—	
Cuttings, holly.....	1056	Decision on appeal.....	1352
Cutters:		Effect, treaty between United States and	
Cigar.....	312, 752	Cuba.....	1524
Dough.....	301	Effect of section 7, act of 1883.....	1604
Ensilage.....	301	Effect of tariff act of 1894.....	1604
Cuttlefish.....	1113	Exportation.....	1618, 1621
Cuttlefish bone.....	978	Invoice used in computing values of cur-	
Cyanide of—		rency.....	1617
Potash.....	1094, 1095	Liquidation.....	1390
Soda.....	1118	Original importation, section 2970, R. S.....	1598
Cycas:		When act became a law.....	11
Palm leaves in wreaths.....	735	Dates.....	414
Stems.....	387	Day shells and night shells, fireworks.....	724
Cylinder—		Dead-oil.....	970
Glass—		Deal ends or mill buttings as lumber.....	1170
Beveled and polished, or colored.....	161	Deals, and other lumber.....	1164
Plates.....	1003	Decalcomania:	
Polished.....	155	Labels.....	657
Silvered.....	159, 160	Paper.....	646
Unpolished.....	152, 153	Transfers.....	658, 718
"Cylindrical or tubular tanks or vessels,"		Decalcomanias.....	658
defined.....	234	Chromolithograph.....	661
Cylinders:		Metal back.....	655
Copper, produced by electrolysis.....	269	Decanters:	
Gas.....	235	Glass.....	136
Cylindrographs.....	1089	Decorated.....	140, 141, 453
Cypress oil.....	74	Not bottles.....	458
		Decision of—	
		Appraiser final unless appealed from.....	1333
		Board of General Appraisers—	
		On evidence taken in other cases and	
		common knowledge.....	1329
		On value final.....	1333-1358
		Collector and naval officer final under	
		R. S. 2796.....	1664
		Collector as to rate and amount of duty	
		final.....	1358
		Merchant appraisers, finality of.....	1353
		Quorum of Board of General Appraisers.....	1348
		Secretary of Treasury on appeal, 90-day	
		limitation.....	1702, 1703
		Deck—	
		Beams, iron or steel.....	188, 189
		Frames.....	1168
		Declaration—	
		By consignee as owner.....	1233, 1260
		Of agent as manufacturer.....	1254
		Owner's, on entry.....	1253
		Unattest abroad.....	1323
		Declarations:	
		False or fraudulent.....	1255, 1256
		On entry.....	1247-1252
		Of goods not exceeding \$100 in value	
		not required.....	1254

D.

Daggers, pearl-handled.....	242
Dahlia bulbs.....	382
Daikon-Takenoko, a vegetable.....	370
Daizu, as beans.....	366, 1119
Damage—	
Allowance—	
Broken knitting machine.....	1477
On account of casualties.....	1611, 1612
On goods entered prior to August 1,	
1890.....	1477
By fire in elevator.....	1613
By moisture.....	1612
By rain.....	1614
By rats.....	1612
Making importation worthless.....	1650
On shipboard, a casualty.....	1612
Duty-paid tobacco in warehouse by fire..	1612
Damaged goods:	
Abandonment must be in writing.....	1473
When abandonment may be made.....	1474
Damages for—	
Breach of redelivery bond.....	1633
Failure of collector to forward protest....	1620

Declarations—Continued.	Page.		Page.
On invoices—		Diabolo spools, toys.....	718
Explanation of.....	1254	Diagonals of worsted.....	570
Shipper's.....	1241	Dial plates.....	290, 291
Decorated—		Dials:	
Antique ewer and dish.....	846	All watch and clock.....	288
Earthenware.....	122-126, 1435	Watch.....	921
Glassware.....	142	Diamantine.....	25, 61
Sprinkler tops.....	296	Diamethylanilin.....	49
Surface-coated paper.....	646	Diamidostilbendisulforacid.....	49
Decorative plants.....	383	Diamond—	
Deductions to make market value.....	1265, 1276	Dust.....	766
Deer—		Pin repaired abroad.....	910
Carcases.....	426	Steel.....	209
Foot handled knives.....	245	Trade Review.....	1061
Horn, sliced.....	18, 1017	Diamonds—	
Horn tips.....	1017	And other precious stones.....	766
Skins.....	1521	Black, carbonado, carbon.....	979
Defense for landing goods without a permit..	1641	Cut but not set.....	773
Degras or brown wool grease.....	67, 69	Glaziers' and engravers', not set.....	679
Delaines, wool.....	578, 1723	Industrial, bort.....	770
Derelict merchandise.....	1564	Jewelry arriving after the owner.....	1159
Delivery of—		Miners' advanced.....	979
Merchandise pending reappraisement....	1352	Repairs to jewelry.....	1555
Merchandise withheld because of unpaid		Small, brown.....	770
duties on a previous importation.....	1695	Dianisidin.....	49
Permit, part designated for examination..	1588	Dianisidine salt.....	46
To consignee without bill of lading.....	1232	Diaries, Japanese.....	944
To holder of bill of lading.....	1233	Diastase.....	37
Trophy or prize.....	1046	Diazo-amido-toluol.....	46
Wines and liquors construed.....	450	Dice.....	709
Without examination, good not as entered.....	1703	Dichlorophthalic acid.....	48
Demijohns:		Dictionaries and conversation manuals, books	
Empty, minimum rate on.....	140	in foreign language.....	944
Glass.....	135, 136	Die—	
Not bottles.....	458	Blanks.....	1128
Demurrage a subject of lien.....	1648	Blocks, iron.....	204
Dental—		Blocks, steel.....	202, 203, 204
Cement.....	112, 113	Dielytra clumps, flowers.....	382
Instruments.....	303	Dies—	
Mirrors.....	173	Molds and plates, appraisement of.....	1425
Rubber.....	823, 826	Monogram.....	205
Speculum.....	1091	Digitalis.....	982
Dentifrices.....	81, 82, 83	Digby chicks as herring.....	990
Deodar, Indian.....	1108	Dill seeds.....	391, 984
Departmental construction.....	1724	Dimethyl aniline.....	50
Deposit to cover duties.....	1404	Dimities, French cotton.....	504
Depreciated currency.....	1407, 1617	Direct shipment from the Philippine Islands..	1590
Deputy collector as appraiser.....	1308	Dirt—	
Derby Peak millstones.....	957	In fluorspar.....	115
Designation—		In nuts, no allowance for.....	424
Covering ultimate use.....	211	Disallowance of—	
Of package for examination.....	1630	Charges to make market value.....	1449
Designs—		Commissions.....	1439
Jacquard, on paper.....	664, 667	Discount.....	1302
For wearing apparel.....	481	Drawback, jurisdiction of Board of General Appraisers.....	1395
Water-color.....	677	Discharge like a coal-tar color.....	43
Desi Gram, peas.....	382	Discharge of freight liens.....	1647
Desk sets and pocket sets.....	807	Discontinuance of suit, voluntary refund....	1711
Detonators.....	729	Discount—	
Developer, blue.....	47	Allowed for cash when cash is not paid..	1450
Dewghuddy hemp.....	996	Claim for, greater than on invoice.....	1350
Dextrine:		Correction of, on reappraisement without	
Made from potato starch.....	63	examination of goods.....	1363
Not specially provided for.....	63	Disallowance of.....	1302
Substitutes.....	63	On cigars, disallowance of.....	1350
White.....	64	Special, not allowed.....	1447, 1448

	Page.		Page.
Discriminating duties—		Dolls—Continued.	
On goods from Spain	1404	Composed of china or bisque ware	718
Under section 22 of the act of July 24, 1897	1392	India-rubber	722
Discrepancy in invoice quantity.	1674	Without heads	718
Disks:		Domestic—	
Aluminum	263	Animals—	
Automobile goggle	162, 163	Pastured abroad and returned	898, 908
Carbon	127	Taken abroad for personal use	913
Cut from filtering paper	641	Butterine, reimported	1583
For making gramophone records	838	Products, free entry of	910-924
Glass—		Value in country whence exported	1433
For optical instruments	1002	Wholesale price as a guide to foreign value	1316
For surgical or dental mirrors	160	Domes, marble	841
Molded	171	Dominican treaty	1737
Rough	171	Dominos	709
Goggle	162, 163	Dotted Swisses	798
Tin—		Doublets, precious stones	766, 768
Cut from tin plate as manufactures of metal	311	Dough—	
Made from American tin plate free	911	Beads, paste	691
Diplomatic questions not within jurisdiction of courts.	1651	Cutters	301
Disposition of abandoned parcel-post packages.	1711	Dovetailed boards	332
Distillates of—		Down, manufactures of	729, 730
Coal tar	48	Dragees, confectionery	347
Moutan wax	1150	Drag saws	260
Distilled spirits	441-446	Dragon's blood	979
Additional duty on, act of March 7, 1864	1598	Drainings, sugar as molasses	338, 342, 344
Compounds and preparations of	443	Draperies:	
Countervailing duty on, from Great Britain	1533	Not regalia	1123
Not exported in good faith	1581	Net	800
Used in the manufacture of medicines, etc., for export	1569	Velvet	1208
Dissecting microscopes	1089	Dravghts, pearl, checkers	709, 710
District courts, no jurisdiction to determine amount of duty on seized goods.	1278	Drawback:	
District of seizure and forfeiture.	1739	Articles manufactured from imported material, paragraph O	1574-1580
Divi-divi.	979	Additional duties not to be refunded as	1579
Extract of	59	Allowed by foreign government, part of market value	1435, 1437, 1438
Docking charges	1639	Box shooks manufactured in Canada	1578
Documents, suppression of	1256	Coal used on steam vessels	1577
Diving suits, cotton and rubber	497	Corks and bottles for beer, not manufactures	1577
Dog—		Duty equal to	908, 915
Biscuit, Melox	932	Flavoring extracts, etc., when shipped to Porto Rico or the Philippine Islands	1532, 1533
Grass	982	Frauds in obtaining	1580
Whips	713	Linseed oil cake	1577
Dogs:		Sugar	1579
Animals for breeding	899	Downs and feathers	729
Taken abroad for personal use	913	Drawers:	
Dogskin:		Cotton, knitted	509
Dressed	741	Wool and cotton	584
Mats	743	Drawing—	
Rugs and robes	742	Cards of leather and metal	810
Undressed	1115	Compasses for use of public schools	1087
Wearing apparel of	740	Frames	299
Dollies:		Knives	243, 244
Cotton, scalloped	788	Paper (bristol board)	661, 669
Lace	798	Drawings—	
Doll:		And engravings	1194, 1195, 1196
Fans	721	Architects	1098
Hairbrushes	699	Pen and ink	839
Heads	710	Drawn work:	
Scissors	721	Articles of	780, 785, 786, 792
Wigs	713, 721, 722	Bureau covers	800
Dolls—		Handkerchiefs	494
And parts of	710	Not imitation lace	548
Bath babies as	712, 717	Sheets and pillow cases	521
		Drawplates.	194

	Page.		Page.
Drayage and storage charges on undervalued merchandise.....	1637	Drops, proprietary.....	34
Dredge:		Dross:	
American, repaired abroad.....	923	Antimony, copper, tin, etc.....	280
As a vessel.....	1650	Mustard.....	865
Dress—		Tin, lead, zinc, etc.....	280, 281
Bones.....	826	Druggets and bockings.....	588
Buttons.....	704, 705, 752, 765	Drugs:	
Facings, velveteen.....	502	Advanced.....	26, 27, 54
Goods—		Gingerine and capsicine.....	20
Embroidered.....	793	Scammony resin.....	21
Of hair.....	578	Crude.....	979-985
Wool and silk.....	576, 599, 626, 627, 628	For unlawful purposes.....	1541
Women's and children's, wool chief value.....	574	Prohibited.....	980
Woolen.....	568, 576	Drumheads.....	835, 836, 837
Worsted.....	569	Drums—	
Patterns.....	1054	Containing coconut oil.....	910
Robes, embroidered.....	793	For acids.....	910
Shields—		For glycerine.....	910
Chief value rubber.....	826	Iron or steel.....	907, 908, 910, 911
Silk.....	617	Iron, cylindrical, containing chemical salts.....	233
Silks.....	1731	Iron, second-hand.....	234
Steels.....	212, 218	Sheet iron.....	232
Suit, trimmed with braid.....	780	Dry weight of wood pulp.....	1182
Dressed—		Dryer, crown patent.....	98
Lambskins, wearing apparel of, muffs and boas.....	746	Duck—	
Lumber.....	1172	Eggs.....	986, 987
Dressing—		Feet, dried.....	427
Oil distilled from grease.....	1007	Gizzards.....	427
Mirrors.....	172	Meat, prepared as meat.....	428
Dressings, suaces.....	375	Ducklings, stuffed.....	731
Drilled—		Ducks, wild, dead.....	426
Opal balls.....	772	Dulcin.....	20
Pearls matched to color and size.....	772	Duplex paper.....	1078
Dried—		Duress:	
Blood.....	935	Addition of 10 per cent to cost.....	1290
Bonito.....	359	Addition of charges under.....	1289
Cabbage leaves.....	395	Addition of Cuban internal revenue tax.....	1281, 1282
Currants.....	417	Additions to avoid penalty, not.....	1272, 1273, 1275
Eggs.....	379	Additions to avoid seizure.....	1294
Egg yolk.....	379	Additions pending reappraisement.....	1288
Fibers, drugs not advanced.....	479	Commission added under.....	1271, 1276, 1277
Fish in packed packages.....	991	Inclusion of commission, not.....	1282
Flatfish.....	1113	Inclusion of Cuban internal revenue tax.....	1284
Flowers.....	385	Invoicing at values previously approved.....	1288
Grapes.....	414	Refusal to permit examination.....	1280
Iris bulbs.....	380	Dust cloths, cotton.....	524
Lily flowers.....	395	Dusters:	
Okra.....	396	Feather.....	698, 699
Stypa grass.....	732, 1005	Of wool cloth.....	567
Vegetables.....	374	Dutch metal.....	268
Drills:		Clippings from.....	55
Agricultural.....	890	In leaf.....	267
Electromagnetic.....	301	Dutiable—	
Machine tool twist.....	298	Articles, failure to mention, intent.....	1607
Pearl button.....	312	Articles in passenger's baggage.....	1157
Drinking—		Charges, appraised value.....	137, 1283
Cups and dishes composed of tin, children's.....	721	Expenses.....	1639
Straws.....	823	Gauge of merchandise withdrawn from warehouse.....	1596
Driving rope, cotton.....	514, 517, 518	Goods imported by mail.....	1711
Dropping bottles.....	137	Items on invoice.....	1303
		Quantity only that arriving.....	1675
		Rate.....	1605

Dutiable—Continued.	Page.	Dyed—Continued.	Page.
Value.....	1270, 1342	Flowers and grasses.....	738
Cuban internal tax not part of.....	1282	Goat hair.....	872
Includes cost of coverings, whether foreign or domestic.....	1439	Immortelles.....	730
Ad valorem goods.....	1450	Tapestry.....	1517
English goods from Canada.....	1305	Dyers' sticks, bamboo.....	1176
Russian wool, invoiced in depreciated currency, paper rubles of Russian..	1625	Dyes:	
Date of exportation.....	1431	Coal-tar.....	1019
Not less than invoice or entered.....	1278	Derived from alizarin or from anthracin..	895
Paintings and frames.....	1304	Dyewood, young fustic.....	1138
Weight.....	1588, 1589, 1674	Dynos.....	1090
Withdrawal from warehouse.....	1397	For educational institutions.....	1088
Duty:		Dynamometers.....	1090
Action to collect additional.....	1276		
Additional—		E.	
Computation of.....	1275	Eagle and condon quills, in crude state.....	735
Goods subject to specific rate.....	1291	Ear caps, patent.....	497
For undervaluation.....	1265	Earth:	
on excess quantity.....	1274, 1276, 1280, 1281, 1295	Fining for coloring wine.....	54
Under section 2970, R. S.....	1596	For mud bath.....	115
Specific rate changed to advalorem..	1268	Fuller's.....	115
Sugar.....	343	Green.....	116
Assessed on more than entered or ap- praised value.....	1335	Polishing.....	28
Canadian, part of market value.....	1281	Red.....	91
Captured goods sold.....	12	Wrought.....	28, 116
Collected in California.....	11	Unwrought.....	96
Estimated, not refunded when goods are forfeited.....	1286	Volcanic, dried and ground.....	115
Excessive sea stores.....	1662	Earthen jars containing ginger.....	1428
Illegally exacted, suit for.....	1704	Earthenware.....	120
Increased shown by consular invoice collection of.....	1243, 1244	Brown, articles of.....	118
Liability of—		Broken clay, pipestems as.....	133
Consignee for.....	1230, 1231, 1232	Common, brown, gray, or yellow.....	117, 118
custom broker for.....	1231	Crucibles.....	117
Lower rate resulting from additions to invoice value.....	1279	Cubes on paper.....	110
On Baggage, time of filing protest against.	1365	Cups, saucers, mugs, and plates, small....	723
On charges, assessment of.....	1270	Decorated.....	121
On entered value when goods are not as invoiced.....	1269	Enameled.....	121
On foreign-built yachts.....	1221	Embossed.....	117
On fractional parts of a dollar.....	1433	Figures.....	118
On less than entered value.....	1270	Jugs, whisky.....	1435
On material for international bridge.....	1651	Jugs containing mineral waters.....	1443
On not less than invoice value.....	1277, 1287	Monogram on.....	122
On prize goods.....	1696	Nonvitrified.....	119
On tea.....	1145	Plain.....	117, 121
On withdrawals from bonded ware- houses.....	1457, 1524	Plaques.....	1124
Paid to Confederacy not legal.....	1680	Plates and mugs decorated with pictures and letters of the alphabet.....	122
Payment of, by carrier, lien for.....	1232	Rockingham.....	117
Payment of, necessary before protest is forwarded.....	1364	Sarreguemines.....	122
Rate and amount of, defined.....	1338	Scale plates.....	121
Remission of.....	1639	Semiporcelain.....	119, 120
On salvaged cargo.....	1230	Slabs of.....	119
Saved to the United States, salvage on..	1615	Teapots—	
On seized goods.....	1264, 1648	Coverings.....	1432
Relief from excess.....	1237	Indian black.....	122
Unpaid, action for.....	1236	Toys.....	722
Unusual coverings, trunks.....	1436	White granite.....	119
Dyed—		Vessels.....	453
African bass.....	1056	Vitrified.....	120
Fiber.....	871	Yellow, glazed.....	119
		Earths:	
		Not specially provided for.....	115
		Ochery.....	90
		Sienna.....	90
		Umber.....	90
		Earthy or mineral substances.....	29, 127
		East India Bombay hemp.....	996

	Page.		Page.
Easter baskets, bamboo or chip.....	327	Embossing machine not a printing press....	299
Eau Broux alcoholic perfumery.....	83	Embroidered—	
Eau de quinine tonique, Pinaud's.....	84	And hemstitched handkerchiefs.....	800
Eau de Marasque or Marasque water.....	872	Articles.....	797
Ebony, cabinet wood..... 315, 1165, 1172, 1174		Made of wool.....	599
Econine and salts of.....	77	Boxes.....	792
Edge's tint.....	88	Button forms.....	701
Edgings..... 774, 786, 798		Buttons.....	705
Cotton shelf.....	780	Cotton netting.....	795
Elgrass, manufactured or dyed.....	833	Drawn work.....	792
Eels:		Dress robes.....	793
In barrels, salted.....	994	Fabrics..... 774, 798	
Fresh or frozen.....	989	Fans.....	748
Effects of professional lecturer in bond.....	1380	Flouncies or flouncings.....	799
Personal, of citizens of the United States		Fur garments.....	793
dying abroad.....	1080	Furniture..... 332, 794	
Personal, in baggage..... 1152-1160		Gloves.....	818
Egg—		Hose and half-hose..... 507, 508, 781, 793	
Cases, as packing boxes.....	320	Leather gloves.....	815
Fruit as yolk of eggs.....	379	Linen handkerchiefs.....	802
Mixture as eggs.....	379	Linen-lined baskets.....	328
Plant seed.....	389	Mexican hats.....	1158
Yolk, dried.....	379	Moccasins.....	1034
Eggs:		Parasols..... 786, 796	
Broken.....	986	Pillows.....	1123
Frozen..... 378, 379		Screens..... 786, 787, 793	
Of game birds.....	985	Stockings.....	781
Of poultry, birds, fish, and insects.....	985	Wearing apparel.....	784
Eiderdown quilts.....	740	Wool—	
Ejusdem generis, rule of..... 689, 1430		Bathing shoes.....	794
Elastic—		Blankets.....	573
Braids..... 518, 779, 790		Wearing apparel.....	794
Cords, cotton.....	518	Embroideries..... 774, 782, 783, 951	
Goring..... 518, 803		“Materials of which composed” con-	
Webbing..... 518, 519, 584, 585		strued.....	801
Elaterium, a crude drug.....	985	St. Gall.....	1317
Electric—		Embroidery—	
Needles.....	255	Attachments on sewing machines.....	959
Storage batteries.....	1087	Canvas..... 487, 556	
Electrical instruments for colleges.....	1087	Clocking on hose as.....	801
Electric-light—		Cotton—	
Bulbs, fruit-shaped and colored.....	169	Skeins..... 469-471	
Lamps.....	168	Mercerized.....	470
Incandescent..... 168, 171, 173		Commercial designation.....	471
Poles.....	319	Measurement of.....	471
Electrodes.....	127	Used on machines.....	470
Electrochemistry apparatus, glass.....	143	Envelopes as, manufacturers of paper....	682
Electrolysis, vases, articles of glass and metal.....	1363	Kindergarten sets.....	713
Electrotype plates..... 257, 258		Machine..... 296, 299	
Electrotypes and stereotypes, old, junk, waste	288	Tapestry.....	783
Elephant's tusks, sawed.....	830	Emeralds, reconstructed..... 768, 770, 773	
Elctrite.....	988	Emery:	
Elk and moose horns.....	1017	Grains and articles manufactured of	
Elliptical shapes, glass, measurement of.....	158	emery.....	723
Elm:		Ore.....	987
Boards, planed..... 1173		Emigrants:	
Logs..... 1165, 1168		Automobile of.....	903
Emblems, religious..... 764, 765		Effects of..... 1097, 1098	
Embossed—		Teams.....	903
And printed writing paper.....	662	Enamel:	
Cardboard.....	665	Dial or dial plates for watches, etc..... 288, 290	
Lithographed post cards.....	678	Fusible.....	174
Metal buttons.....	273	Glass.....	174
Metal-coated paper strips.....	644	Paints..... 94, 86	
Paper..... 646, 652, 661		White..... 95, 96, 174, 1001	
Post cards.....	655		

	Page.	Entry—Continued.	Page.
Enameled—		All on one vessel to one consignee to be included in.....	1254
Ware, iron and steel hollow ware.....	250-252	Amendment of.....	1282
Oilcloth.....	491	As used in section 21, act of June 22, 1874, defined.....	1488
Upholstery leather.....	504	At frontier of slight value.....	1636
Enamels, not specially provided for.....	94	Before arrival of merchandise not valid.....	1591
Enamulette, as paint containing zinc.....	96	By appraisement..... 1277, 1278, 1636	
Enamillite, cellulose.....	53	By appraisement of wrecked goods.....	1564
Enfurance grease.....	84-86	Of goods—	
Engine and motor, full size not a model.....	1053	By attorney.....	1681
Engines—		By a foreign corporation.....	1636
And plows as entireties.....	893	By fraudulent papers.....	1264
Steam.....	296	By receiver of insolvent consignee.....	1233
Forgings for.....	193	Convict-labor goods, not permitted.....	1548
Locomotive.....	303	Declarations on.....	1247, 1252
English—		False statements in.....	1263
Crystals, saccharine.....	345	Fraudulent, for acts done subsequent to filing.....	1261
Goods from Canada, dutiable value of.....	1305	Illegal false returns by customs officers.....	1259, 1260
Internal-revenue stamps.....	1650	I. T. not to include merchandise for several consignees.....	1689
Oak boards as sawed lumber.....	316	Immediate transportation, consular invoice not required for.....	290
Rye grass seed.....	1110	Intentional omission of items from.....	1291
Engraved—		Made through error.....	1635
Bookplates.....	258	Of surplus tea stores.....	1664
Iron or steel plates for production of designs, etc., on glass.....	257, 258	On bill of lading not endorsed.....	1234
Paper.....	661	On imperfect invoice.....	1237
Steel plates for printing.....	257, 258	On triplicate invoice.....	1246
Engravings, not specially provided for.....	669, 839	Overvaluation on.....	1265
Colored.....	675	Preparation of.....	762
For the U. S. or Library of Congress.....	938	Presented after office hours.....	1586-1588
Unbound hand engraved.....	1194	Rejection of.....	1590
Works of art.....	1205	Right of holder of bill of lading to make.....	1236
Engravers'—		Under repair bond.....	1556
Blocks, of wood.....	315	Under six months' bond.....	1555
Plates.....	205, 206	When entry begins—producing invoice before consul.....	1606
Ensilage cutter.....	301	When premature.....	1590
Enter, attempt to, what is.....	1259	Without certified invoice.....	1689
Entered value:		Envelopes:	
Application of, in determining rate of duty.....	1206	Embroidery.....	682
Commission included in.....	1284	Flat.....	664
Duty on, when goods not an invoice.....	1269	For medicine.....	1149
Duty on, not less than..... 1265, 1270, 1286		Paper.....	643, 663
Error in.....	1268	Ex nomine, rule of.....	1725
Error in proforma invoice.....	1275	Eosine, crude.....	43
Excessive additions to make.....	1279	Epaulets, military ornaments.....	271, 783
Higher than market value, par. I.....	1269	Epsom salts.....	66, 887
Less than invoice.....	1287	Equipment—	
Nondutiable items included in.....	1288	And repairs to American vessels, section 3114, R. S.....	1638-1640
Reduction of..... 1265, 1267		For American vessels, entry of, under bond.....	1557-1561
Shortage not part of.....	1278	Of vessel, not merchandise.....	1641
When subject to challenge.....	1343	Erasers:	
Entireties:		Ink, steel brush.....	700
Cases or books filled with needles.....	254	Metal, with fixed blades.....	239
Corals and settings.....	763	Steel.....	236, 237
Cups and saucers, china.....	124	Erasures, effect of.....	1681
Invoice not controlling.....	1724	Ergot.....	57
Marble pieces cut to size as.....	179	Erika leaves.....	731
Paints in boxes with brushes.....	97	Ermine tails.....	743
Orchestrion with extra rollers.....	837		
Toilet sets as.....	828		
Entrance and clearance of pleasure yachts.....	1225		
Entry:			
Additions on invoice not on entry.....	1291		
After arrival but before unloading of merchandise.....	1585		
After expiration of one year from date of importation.....	1636		

Errors:	Page.	Evidence—Continued.	Page.
Assignments of.....	1329, 1344, 1372, 1385	Preponderance of.....	1260
Correction of.....	1384	Questions of doubt.....	1725
In procedure, mode of correction.....	1345	To prove finding of protest.....	1404
Manifest clerical.....	1265,	Want of legal.....	1343
1268, 1271-1274, 1279, 1280, 1284-1286,		Without production of samples sufficient	
1303, 1346, 1349, 1395, 1438, 1486, 1487		in certain cases.....	1327
Essence, coffee.....	433	Examination—	
Of anchovies.....	378	By merchant appraisers.....	1309, 1631
Essences:		Of every package not necessary.....	1631
Floral.....	84, 85	Of all packages when invoice is incom-	
Flower.....	85	plete at expense of importer.....	1637
Proprietary.....	34	Of goods prior to entry not permitted,....	1280
Essential—		Of samples by Board of General Apprais-	
And distilled oils, combinations of,		ers necessary on reappraisement.....	1631
n. s. p. f.....	74, 885	Of imported tea.....	1143
Oil of nutmegs.....	76	Of merchandise on reappraisement.....	1342
Ester gum.....	56	Of one in ten not mandatory.....	1632
Esters of all kinds.....	57	Of samples on reappraisement.....	1348
Estimation of values of foreign coins.....	1629	Excess—	
Etamines, cotton.....	483, 484, 775, 794	Duty, relief from.....	1237
Etchings.....	669, 839, 933, 939, 1202	In one shipment claimed to offset short-	
Ether—		age in another.....	1666
Acetic.....	58	Quantity—	
Butyric.....	77	Additional duty on....	1274, 1276, 1281, 1295
Ethyl chloride.....	58	Invoice description.....	1280
Enanthic.....	76	Excessive—	
Oenanthic.....	1217	Additions to value on entry.....	1487
Pelargonic.....	76	Award by jury.....	1704
Salicylate of quinine.....	1101	Sea stores.....	1517, 1662, 1663, 1664
Ethers—		Storage charges.....	1638
And esters of all kinds.....	57	Weight on invoice not a manifest clerical	
Containing alcohol.....	33	error.....	1486
Ethyl—		Excesses as drugs.....	54, 979
Acetate.....	57	Execution of customs bonds.....	1681
Carbonate of quinine.....	1101	Exemption allowed returning residents..	1153, 1155
Chloride.....	57, 58	Exhausters:	
Etiquettes, paper labels or tickets.....	650	Earthenware.....	129
Euquinine.....	1101	Stoneware and metal.....	121
Eucalyptol camphylene.....	77	Ex parte affidavits.....	1322, 1326
Euxesis, toilet article.....	83	Expenses:	
Evasion of customs officers, smuggling....	1744, 1745	Dutiable and nondutiable.....	1639
Evergreen seedlings.....	1107, 1119	For repairs—repainting vessel.....	1639
Evaporating pans, stoneware in part.....	118	Of administering public law.....	1689
Evidence—		Of drayage from G. O. warehouse to ap-	
As to filing in time.....	1395	praiser's store.....	1637
At hearing of protest.....	1402	Of stamping cigarettes, jurisdiction.....	1393
Conflicting, before board will not be re-		Experimental use as against general use....	1725
viewed by court.....	1330	Expert knowledge.....	1725
Excluded at hearing will not be heard on		Explosive, safety fuses not.....	1689
appeal.....	1344	Export—	
Facts conceded at trial can not be refuted		Bond.....	1654
on appeal.....	1374	Bounty bestowed by the German Gov-	
Failure to consider.....	1344	ernment on certain articles.....	1534
Failure of importers to offer.....	1331	Defined.....	11, 12
Imperfect record.....	1467	Duty, States not to levy.....	13
In one case employed to determine		Duty on molasses as part of market value.	1450
another.....	1321	Exportation:	
Incompetent, admitted.....	1323	Collector's certificate of.....	1654
Irrelevant and misleading.....	1704	Period of, date of shipment from foreign	
Necessary to rebut assessment by col-		country.....	1309, 1310
lector.....	1581	Place of, bill of lading made in Switzer-	
Not submitted to board introduced on		land, invoice certified in France.....	1518
appeal.....	1505	Of merchandise from general order.....	1654
Of intent to defraud the revenue.....	1609	Of forfeited merchandise.....	1739
Of market value.....	1308	What constitutes.....	6, 9
On appeal not introduced at hearing.....	1325		

	Page.		Page.
Exported merchandise landed abroad and sold.....	1579	Fabrics—Continued.	
Exporter, fraud of.....	1258, 1261	Pile—	
Expositions, exhibits for, appraisement of....	1286	Cotton.....	499-502
Extracts:		Flax, hemp, or ramie.....	545
Bixine coloring matter.....	96	Silk.....	606
Cheviot.....	1193	Plain woven, flax, hemp, or ramie.....	549
Flavoring.....	84, 85	Rubber.....	1088
Flavoring, and other containing alcohol..	33	Silk.....	621
Juniper and elder.....	875	And wool.....	627
For dyeing, coloring, or staining.....	58	Suitable for pneumatic tires, cotton.....	510
Persian berry.....	59	Tinsel wire.....	271
Extracts—		Union, mercerized.....	482
Of bark for dyeing or tanning.....	1139	With fast edges.....	510
Of chlorophyll.....	59, 60	Wool, knit.....	563
Of coffee.....	433	Woven—	
Of gentian.....	56	Chief value silk.....	617
Of licorice.....	66	Of flax.....	555
Of divi-divi.....	59	Silk.....	621, 1676
Of logwood.....	59	Fascinators, wool, knitted.....	582
Of mangrove.....	59	Facsimiles of postage stamps.....	1120
Of meat—		Factis truss pads.....	871
And wine.....	458	Failure of—	
In bottles.....	138	Importer to appear before board.....	1402
In cubes.....	427	Protest to point out controlling provision..	886
Not specially provided for.....	426	Failure to—	
Of nutgalls.....	58, 59	Appeal from collector's decision.....	1350, 1405
Of taraxacum.....	56	Examine merchandise.....	1342
Of safflower.....	59, 60	Find actual value.....	1301
Of vegetable origin, for dyeing or tanning.	41	Introduce evidence before General Ap- praisers.....	1325
Eyeglass lenses.....	164	Mention, exemption of \$100 worth.....	1607
Eyeglasses.....	161, 162, 1002	Serve bill of particulars within 30 days... Specify particular paragraph.....	1703 1395
Eyes, artificial.....	150	Falcon press, printing.....	303
Birds'.....	171	False—	
For horses.....	146	Declaration, consignee as owner.....	1260
Parts of toys.....	712	Entry, tobacco.....	350
F.		Entry, accessories after the fact.....	1262
Fabrics:		Invoice, fraud of shipper.....	1262
Anticassar cloth.....	527	Invoice of tobacco.....	1263
Artificial silk.....	629	Reeds.....	215
Bullions.....	271	Return of weight.....	1260
Composed wholly or in chief value of beads.....	683	Statement, gratuitous.....	1259
Cotton and calf hair.....	528	Statement in entry.....	1263
Cotton—		Fancy—	
And jute.....	525	Fringed linen towels.....	794
And linen.....	528	Holders for toothpicks.....	326
And rubber.....	524	Pins.....	287
Cream lambskins, pile.....	570	Soap.....	735
Crash, chain bordered.....	551	Wafers, confectionery.....	365
Flax.....	882	Wood boxes.....	336
And wool.....	553, 554, 623	Fan sticks.....	334
With triple warp and double weft, plain woven.....	550	Fans:	
Imitation cane seating, of cotton.....	528	All kinds.....	747
India rubber.....	271	Common palm-leaf.....	988
Jacquard.....	801	Composed of silks and bone.....	852
Figured silk.....	621	Doll.....	721
Jute—		Embroidered.....	748
Plain woven.....	543	Hand-painted mother-of-pearl and metal. Japanese paper.....	749 749
Colored.....	544	Ornamental.....	852
Twilled.....	548	Paper novelties.....	748
Lahn, or lame.....	271	Paper, surface-coated.....	749
Metal threads.....	271, 272	Silk lace.....	749
Narrow braided.....	519	Tissue paper.....	748
Narrow woven cotton.....	512	Toy.....	713
		White screen.....	749
		Farb-mals, barley.....	359

	Page.	Felt—Continued.	Page.
Farina.....	1216	Made of fur.....	742
And potato starch.....	434	Mats.....	569
Of the root of the plant manihot not starch.....	1141	Pads of cattle hair, tarred.....	387
Farmers' knives.....	243, 244	Roofing.....	635
Fashion—		Wool, not woven.....	563, 566
Magazines lithographically printed.....	655	Fence posts.....	319, 1164
Periodicals.....	1061	Fencing, iron or steel, flat, for.....	210
Plates.....	1216	Fenders, of vegetable fiber.....	553
Plate drawings by an American artist.....	1202	Fennel—	
Prints for periodicals.....	1061	Oil.....	74
Fasteners:		Seed.....	1107
Glove.....	275	Fenugreek seed.....	1107, 1110
Snap.....	273, 274	Fern—	
Fats used in soap making, wire drawing, and leather dressing.....	1006	Balls.....	387
Faucets, metal, olive oil can.....	308	Baskets or boxes made of bark.....	329
"Fausse lisses," or false reeds.....	215	Dishes, bamboo.....	327
Favored-nation clause, reciprocity agreements.....	1513, 1514, 1517	Leaves.....	732, 738
Feather articles.....	732, 733, 735	Fernet bitters.....	444, 445, 1516
Beds and pillows.....	735, 739	Ferroalloys.....	185
Boas.....	736	Ferro-china bisleri as bitters.....	444
Bristles.....	824	Ferrocyanide of iron.....	87
Dusters.....	698, 699	Ferrochrome.....	185, 186, 880, 881
Hats in part of metal.....	376	Ferromanganese.....	185
Pens.....	732	Ferromolybdenum.....	279, 881, 1021
Trimnings.....	740	Ferromolybdenum.....	185
Feathered post cards.....	681	Ferrophosphate.....	185
Feathers—		Ferrophosphorus.....	185
And downs.....	729	Ferrosilicon.....	185
Advanced.....	736	Ferrotitanium.....	185
Colored.....	739	Ferrotungsten.....	185
Ostrich, crude, not ornamental.....	737	Ferrovanadium.....	185
Ornamental.....	737	Fez caps, wool knitted.....	582
Of wild birds, prohibited importation.....	729	Fiber:	
Prohibition of importation of, does not apply to artificial flies.....	256	African or erin vegetal.....	1006
Stripped and bunched.....	738	Bassine or palmyra.....	558, 559
Featheredge braid.....	790	Cloth.....	556
Featherstitch braids.....	774, 790, 794, 801	Dyed.....	871
Fees:		Indian or Palmyra.....	874
Abolished.....	1458-1461, 1637	Istle or Tampico.....	1004
And charges, jurisdiction of Board of General Appraisers.....	1368	Kittool.....	875, 1006
Dutiable and nondutiable.....	1460	Piassara, African bass.....	559
For clearance.....	1459	Vegetable, partially manufactured.....	871
For entry under section 4382.....	1460	Starch.....	875
For gauging rum.....	1461	Fibers—	
For legalization not dutiable charge.....	1442	And grasses.....	1004
For certifying outward manifests, abolished.....	1460	Dried, drugs advanced.....	54, 979
For permits, owners' oaths, certificates.....	1461	Paper stock.....	1075
For weighing and gauging.....	1674	Hemp knotted.....	555
Of Department of Agriculture for inspection.....	1381	Vegetable, manufactures of.....	556
Of merchant appraiser to be paid by Government.....	1353	Fibrin, in all forms.....	989
On sample packages.....	1638	Fibrite, artificial sulphate of lime.....	87
Feldspar.....	129, 1216	Fibrous vegetable substances.....	1004, 1006
Felt:		Fiddlers' knives.....	241
Adhesive.....	635, 988, 989	Field glasses.....	165, 166, 1156
Carpeting.....	590	Field peas.....	382
Cattle hair.....	565	Figures:	
Cattle hair and jute.....	566	Bisque.....	127
Covers, figured, wool.....	567	Earthenware.....	118
Endless, machine blankets of.....	569	For church.....	1200
Hats, varnished.....	583	Lithographed, toys.....	721
		Metal, not toys.....	311
		Of the Savior, life-size, wax.....	1123
		Of wood, carved.....	1127
		Plaster of Paris, gilded.....	310
		Wax.....	722
		Fig trees.....	388

	Page.		Page.
Figs.....	414	Fireproofed lumber.....	1169
Baked and stuffed with almonds.....	407	Firewood.....	1164
In baskets.....	415	Fireworks of all kinds.....	724
In Marischino.....	410	Fish:	
Preserved in sugar.....	411	Anchovies.....	401
Filberts, not shelled, shelled.....	421, 422	In cylindrical boxes.....	403
File blanks.....	245, 246	And pickles mixed.....	402
Files.....	245, 246, 247	Appetit-sild in tins.....	403
Emery.....	723	Articles in chief value of.....	402
Measurement of.....	246	Antipasto as fish in tins.....	402
Nail.....	246, 247	Balls or fish pudding in tins.....	399
Filing:		Bismarck herring.....	402
Claim for allowance before condemnation.....	1469	Bladders—	
Protests with Treasury Department.....	1389	Bleached, etc.....	62
Of notice of dissatisfaction.....	1405	Prepared.....	61
Protest by other than importer or agent.....	1401	Split and dried.....	935
Proofshowing article is an antique.....	1207	Boned.....	397
Timeliness of protest.....	1369	Caught in the Great Lakes.....	1066
Filled cotton cloth.....	490, 491, 492	Cream of cod.....	402
Filler and wrapper tobacco.....	349	Except shellfish.....	396
Filler tobacco, duty on.....	350	Fresh-water.....	989
Filling apparatuses for safety lamps.....	1051	Glue.....	61
Films:		Ground and cooked "Kamoboko".....	401
Moving-picture.....	908, 913, 914	Herring—	
Photographic.....	908, 917	Kipperd.....	404
Toy moving-picture.....	714	Pickled, skinned, and boned.....	401
Filter—		In kegs, spiced.....	404
Stock.....	635	In compartment packages.....	992
Tubes.....	133, 134	In lard.....	397
Filtering—		In oil.....	399
Cloth.....	490	Skinned or boned.....	395
Masse.....	636	In other packages.....	403
Paper.....	682, 1088	In packages.....	989, 990
Prepared for colleges.....	1087	Containing less than one-half barrel	
Filtrier material.....	636	frozen fish.....	881
Finality of—		In tins.....	399
Appraisements.....	1303	Measurement of.....	403
Board's decision.....	1320	Netting, cotton.....	526
Collector's decisions.....	1358	Oil, cod.....	1068
Decisions by the Board of General Ap-		Oil, not specially provided for.....	67
praisers.....	1320, 1370	Packed in fish oil.....	397
Findings of fact by General Appraisers.....	1325,	Paste or sauce.....	375
1327, 1704, 1705, 1726		Prepared Kazunoko.....	401
Fines:		Pudding and fish balls in tins.....	399
Baggage not declared.....	1607	Roe.....	398
How collected.....	1648	Preserved.....	401, 402
On masters of vessels.....	1662, 1649	Russian sardines.....	403
Finishing powder.....	1218	Sardines in boxes.....	404
Fining earth.....	54	Sauce or paste.....	375
Fire-alarm telegraphing machines.....	1055	Scale and glass buttons.....	705
Fire—		Skinned or boned.....	398, 400, 401, 403
Brick.....	107, 881	Skins.....	995
Common English.....	108	Sounds.....	934
Glazed.....	108	Prepared.....	60, 61, 62
Linings for coke ovens.....	107	Sprats in oil.....	403, 404
Cement.....	113	The product of French fisheries.....	1534
Clay, ground.....	115	The product of the St. Pierre and other	
Sand.....	1130	French fisheries.....	1535
Screens, painted.....	526	Tunny, in tins.....	401
Tiles.....	109	Weight of.....	993
Firearms:		Fisheries, American, products of.....	1065, 1066
Not specifically provided for.....	247	Fishhooks.....	256
Caps and wads.....	1449	And flies of metal and feathers.....	257
Parts of.....	250	Wire.....	257
Fireboards, paper.....	664	Fishing—	
Firecrackers.....	718, 723	Boat and net.....	1100
Fireplaces, tile.....	109	Nets, cotton.....	533

Fishing—Continued.	Page.	Flies:	Page.
Poles, rattan.....	335	Artificial.....	256, 257
Reels.....	256	Of feathers and metal.....	257
Rods.....	258, 257	Flint:	
Tackle.....	256	Ground.....	129
Fishplates:		Polishing stones.....	131
Old.....	1024	Stones, unground.....	996
Railway.....	197	Flitches, walnut cabinet wood.....	1175
Fitted leather cases.....	807, 808	Flitters.....	267, 268, 882
Fittings for hand bags, metal.....	754	Floats.....	245, 246
Five per cent discount cases.....	1562	Cork.....	256, 257
Fixtures, hardware, gold or silver plated.....	306	Seine.....	257
Flags:		Flocks, wool waste.....	1192
Not regalia.....	1127	Floorcloth, canvas.....	558, 1217
For the United Society of Christian Endeavor, free.....	1125	Floor-planing machines.....	299
Small, not toys.....	719	Floor—	
Silk, manufactures of silk.....	621	Mattings, straw.....	533
Flannels—		Plates—	
For underwear, wool.....	572, 573	Cast iron.....	230
Outing, woolen.....	573	Steel.....	206
Persian, French, and Scotch.....	574	Flooring:	
Wool.....	572	Japanese oak.....	1166
Flaps for cigars, composed wholly or in chief value of paper.....	652	Marble.....	178
Flash-light cases.....	756	Floral—	
Metal.....	306	Essences.....	84, 85
Flasks:		Extracts.....	37
Chemical.....	147	Waters.....	81, 82, 83
Florence.....	138	Florence—	
Glass, willow covered.....	325	Flasks.....	138
Flasks, quicksilver.....	907	Valley lily.....	85
Flatfish, dried.....	1113	Florescopes and microscopes.....	722
Flat rods, iron or steel.....	209, 210	Florin, Austria-Hungary.....	1625, 1628, 1629
Flats, plaits of straw.....	697	Floss, silk.....	605
Flavoring extracts.....	84, 85	Flounces, beaded.....	798
Exportation of, drawback on.....	1574	Flouncings.....	774
Flavoring for drinks.....	867	And edgings.....	799
Flax.....	1004	Lace.....	795
And wool fabrics.....	553, 554	Silk-lace.....	795
Articles.....	554, 555	Flour—	
Card cloth.....	550	Bags made of jute.....	1668
Card waste.....	1076, 1077	Banana.....	870
Crash.....	549	Bean-Konjak.....	370
Fabrics, component material.....	882	Dust in empty bags.....	1668
Fabric, plain wove.....	549, 550	Konnyaku.....	370
Fire hose, seamless.....	536	Magnesium.....	264
Gill nets.....	532	Pea.....	368
Manufactures of.....	551	Potato.....	434, 1095
Noils.....	996	Rice.....	362
Laces.....	777	Root.....	1218
Seins.....	532	Rye.....	1534
Straw.....	995, 996	Tapioca.....	1141
Squares, unhemmed.....	548	Wheat.....	1160
Tapes.....	542	Flower—	
Threads, twines, and cords.....	530, 531	Seed.....	1109
Tow of.....	996	Waters.....	81, 82
Towels.....	1037	Flowers—	
Waste.....	1075, 1076	And fruits, glass.....	738
Webs.....	532	And grasses, dyed.....	739
Wool fabrics.....	627	Articles made of artificial.....	735
Yarns.....	531, 532	Artificial—	
Flaxseed, impurities in.....	389, 390, 392	China.....	127
Flesh brushes.....	700	Porcelain.....	127
Fleshing knives.....	243, 244	Cut.....	382
Flexible copper pipes.....	270	Dried.....	385
Flexoloid.....	61	Drugs—	
		Advanced.....	54
		Crude.....	979

Flowers—Continued.	Page.	Forfeiture—Continued.	Page.
Lavender.....	85, 981	Knowledge of fraud necessary to.....	1262
Lily or vegetables.....	373	Reasonable doubt.....	1261
Of sulphur.....	1132	Statute of limitations.....	1262
Flues:		Where there is no loss of duty.....	1264
Boiler, steel.....	235	Forged—	
Iron or steel, welded, etc.....	231, 232	Shotgun barrels.....	1113
Flume hose, cotton, flax, hemp, or ramble.....	536	Steel bars.....	205
Fluoric acid.....	888	Forgings:	
Fluorspar.....	115, 116	Axle.....	222, 223
Flurate of aniline.....	50	Iron or steel.....	193, 195
Flute swabs or brushes.....	699	For locomotives.....	193
Fluted glass.....	155, 156	For steam engines.....	193
Flutings.....	774	For vessels.....	193
Fluxes, glass, not specifically provided for....	94	Machined.....	195
Fob chains, brass.....	759	Piston rods of steel.....	194
Foli:		Steel balls as.....	194
Aluminum.....	305	Steel, finished.....	195
Copper chief value.....	270	Forks.....	243, 244
Paper, coated paper.....	651	Formagen, dental cement.....	113
Tin.....	313	Formalin.....	60
Fonts or urns, marble.....	841	Formaldehyde.....	42
Food:		Solution.....	60
Coloring for.....	868	Fossils.....	997
Infants, in small packages.....	38	Fountains, marble.....	841, 844
Maltose, in packages of less than 2½ pounds.....	37	Fountain-pen barrel not a penholder.....	282
Foodstuffs.....	1153	Fountain pens and parts of.....	284, 285
Fook, lin as a drug advanced.....	55	Foxberries in water.....	411
Foot—		Foxtails, imitation.....	746
Muffs, leather chief value.....	808	Fox skins, dressed, dyed, and pointed.....	743
Shampoo.....	18	"Fraises," sugar-manufacturing machinery, free.....	891
Forceps, surgical.....	304	Fractions of a day.....	1604
Foreign—		Frames—	
Attachment proceedings.....	12	Added to value of paintings.....	1401
Built American-owned yachts.....	1226	And paintings, dutiable value.....	1304
Built vessel is not merchandise.....	1650	Deck or ship timber.....	1168
Built yachts.....	1221, 1223	Drawing, textile machinery.....	299
Coins, value of.....	1616, 1629	For church paintings.....	1205
Country, Cuba.....	8	For dutiable paintings.....	847
Postage stamps.....	1121	For free paintings.....	1199
Territory, occupation of by U. S.....	12	For spectacles, eyeglasses, goggles.....	161, 162
Forfeited articles, appraisement of.....	1610	Handbag, gold or silver plated.....	307
Forfeiture:		Iron or steel.....	188, 189
Articles in passengers baggage.....	1606- 1611, 1738-1747	Metal of parabolic mirrors.....	160
Acquittal on criminal charge plea in bar of.....	1741	Mesh-bag.....	756
Baggage—		Miniature.....	311
Articles on persons as.....	1607	Oriental, painting.....	335
Steerage passengers.....	1607	Pathoscope.....	167
Bond for exportation.....	1296	Picture—	
Burden of proof.....	1260, 1608	Gilded or plated.....	305
Cattle straying across border not subject to.....	1258	Jeweled.....	310
Completion of fraud not necessary for....	1262	Saw.....	260
Entry after forfeiture accrues.....	1746	Spectacle, parts of.....	163
Decree by default—opening decree after expiration of term.....	1610	Separately dutiable.....	852
Duty payable on goods forfeited.....	1284	Roving, not machine tools.....	299
For fraud or smuggling.....	1738-1747	Spinning, not machine tools.....	299
For undervaluation, additional duty accrues.....	1265, 1291, 1296	Steel, window.....	189
For false invoice.....	1258	Franc, French, value of.....	1628
For fraud of shipper or consignor.....	1258, 1260, 1261	Fraud.....	1258-1296, 1606-1611, 1747
Jurisdiction of Board of General Ap- praisers.....	1263, 1388	Consummation of.....	1262
		In obtaining drawback.....	1580
		Of consignors.....	1258
		Of shipper.....	1258, 1260, 1261
		On importer, goods invoiced higher than correct value.....	1295

	Page.		Page.
Fraudulent—		Friezes, tile for	108, 110
Attempt to enter or introduce completed fraud.....	1608	Filled muslin cloth	798
Concealment—		Fringes	775
After removal.....	1743	Composed wholly or in chief value of beads.....	683
In another jurisdiction.....	1743	Beaded.....	684, 686, 688
Temporary.....	1744	Bullion.....	273
Truck as a "warehouse".....	1743	Lamp.....	684
Declarations, penalty for	1255	Wool.....	584
Entry	1740	Frogs:	
Acts done subsequent to filing.....	1261	Dressed, American caught.....	1073
Baggage, steerage passengers.....	1607	Legs, similitude.....	871
False statement, appliance or practice.....	1610	Railway.....	205
Of cheese.....	1264	Frosted wheat	1162
Reliquidations of, after one year.....	1486	Frostings, not specially provided for	94
Importation—		Streuperlen.....	97
Action in personam.....	1264	Frozen—	
Contrary to law.....	1741	Fish in packages containing less than one-half barrel.....	992
Separate penalties for same act.....	1741	Wheat.....	1161
Intent—		Fruit:	
Smuggling.....	1609	Allowance for decay of.....	1463, 1465
Invoicing tobacco.....	350	Artificial.....	735, 738
Relanding.....	1580	Box shooks.....	320
Free—		Boxes—	
Entry—		American made.....	321
Of books.....	938	Foreign made.....	321
Of books by mail for institutions under paragraph 519.....	1711	Half rate on.....	322
Of goods from countries with which reciprocity does not exist.....	1521	Shooks for.....	322
Of Indians' effects.....	1217	Condemned.....	1468, 1469, 1476
Of medals.....	1047	Cherries, sour.....	406
Of products of American fisheries.....	1065	Crushed currants not.....	405
Ship's equipment.....	1660	Containing alcohol.....	404, 405
Of wrecked goods from vessel two years sunk and abandoned.....	1564	Damaged, allowance for.....	418, 1463-1478
Goods—		Destroyed by health officers, nonimportation.....	1475
Coverings for, free.....	916	Dried or candied.....	1534
Invoices for.....	1238	Dried, desiccated, or evaporated.....	404, 405
Necessity of complying with law.....	1747	Drugs advanced.....	54
Forfeiture of.....	1246	Edible—	
Permit required.....	1641	Gooseberries pickled.....	412
List, construction of.....	887, 906	Prepared or preserved.....	404, 405
Freestone	180, 181, 1129	Essences.....	74
Freezing, damage by, a casualty	1613	Containing alcohol.....	33
Freight:		Ether, amyli valerianate.....	76
Charges.....	1301, 1448	Evidence of decay of.....	1473
Not part of value.....	1293	Ethers.....	74
French—		Glacé, when a nonimportation.....	1637
Brandy from Habana.....	1519	Green, ripe, or dried, not specially provided for.....	997
Canadian cattle.....	901	Imitation, confectionery.....	347
Calendars, bound.....	946	In spirits, excess of.....	411
Chalk.....	104, 105	In brine.....	998
Franc, value of.....	1628	In own juice.....	412, 413, 414
Grass seed.....	1110	In spirits, excess of alcohol, French reciprocity.....	411, 1515
Local taxes on alcohol.....	1434	Juice—	
Products exported via England.....	1514, 1520	Concentrated.....	462
Revenue taxes part of value.....	1436	Currant.....	463
Sugar bounty.....	1588	Medicated.....	463
Fresh-water fish	398	Made from grapes.....	462
Frozen.....	990	Pineapples and juice mixed.....	408
In half barrels.....	990	Raspberry cordial.....	462
Skinned and boned.....	398	Not specially provided for.....	461
Fresnel lenses	164	Percentage of alcohol in determination of.....	453
Friction-top cans	1211	Knives	243, 244, 245

Fruit—Continued.		Page.	Furniture—Continued.		Page.
Nonedible as		979	Spanish brazier		1208
Prepared, marischino cherries		412	Upholstered with antique tapestry		1208
Preserved in sugar		404-414	Vans as coverings		1436, 1438
Fuller's earth, specially provided for		115	Willow		325
Fulminates—			Wood chief value		331-336
And fulminating powder		999	Fusees		725, 728
Manufactures of		729	Fusel oil		60
Fungus:			Fusians, not specially provided for		94
Dried, as a drug		985	Fusians or charcoal crayons		97
Edible, as a vegetable		395	Fusible enamel		174
Funkia, herbaceous plants		383	Fustic		1140
Furnace sand		1130	Fustin		41
Furnaces:					
Purves		235	G.		
Welded cylindrical		231	Gaduol		35
Funnels, glass, colored		142	Gaiter buttons of papier-mâché		707
Fur—			Galingale rush		1005
Caps not hats		745	Gallamine blue		44
Clippings	743,	1000	Gallein		44
Felt hat material		742	Gallolith—		
Garments, embroidered		793	Combs		823
Hats, trimmed	616,	751	In sheets		871
Hoods		751	Umbrella handles		882
Lined—			Gallipots		119
Gloves		741	Gallocyanine		44
Silk garments		746	Galloflavin		23
Wool garments	744,	746, 747	Gallon:		
Manufactures of	740,	744	Defined		417
Motifs		733	Standard		459
Pieces, dressed and dyed		741	Galloons	774,	775, 776, 799
Plateaux, forms, or shapes for hats, bonnets, or hoods		751	Metal thread		782, 783
Rugs in part of wool		745	Silk trimmings		797
Sealskins		741	Galvanized—		
Scrap		1000	Date nails		228
Sheepskins not wool		1000	Iron or steel		197, 198, 199
Skins—			Iron sheets, corrugated		205
Charges for care of, not commissions		1442	Wire		1163
Cost of dying, dressing, and packing		1449	Galvanometers	1088,	1090, 1091
Dyed and dressed		743	Gambier		1001
Sheared		744	Gambin, B.		43
Wearing apparel		740	Game		425
In part of wool		745	Animal heads		1017
Waste		864	Birds		425
Furs—			Dead, undressed		426
And fur skin, undressed		999	Plumage of		730
Appraisalment of		1316	Games, compendium of		711
Dressed on skin	740,	743	Garlic		380, 381
Dressed or dyed		540	Garment labels		517
Partly manufactured rugs		745	Garments, gloves not		508
Purchased in summer time		1155	Garnet:		
Furnished toilet cases		810, 883	Cut		770
Furniture:			Manufactures of		178, 179
Antique		1208	Garnetted waste wool		1192
Bent wood in pieces		336	Garnitures		796
"Boule" inlaid		333	Garters:		
Cabinet of wood		331	Cotton		510
Chief value of metal, silk, or wool	333,	334	Silk		611, 613
Covered with cotton velvet or tapestry		332	Gas:		
Designs of plaster of Paris		1054	Black		89
Embroidered	332,	794	Burners		251
For house of ill fame, not household effects		952	Cylinders		235
House or cabinet of wood	331,	333	Natural	1050,	1051
Of wood and china		127	Retorts	133,	134, 135
Renovated		952	Retort carbon, ground		129
			Gastric juice		18
			Gaufrage leather		1032

Gauge—	Page.	Ginger—Continued.	Page.
And proof of brandy.....	443	Grass oil.....	77
At expense of importer, when.....	1670	Preserved.....	412
By Government officer final.....	1674	Root—	
Glasses.....	143, 146	In brine.....	437
Of beer.....	1672	Unground and not preserved..	435, 436, 437
Of grapes.....	417	Salted.....	437
Of spirituous liquors.....	1675	Spent.....	438
Standard of tinsel wire.....	272	Stern and cargo.....	412
Wire.....	214	Wine.....	448
Gaugeable goods, duty on quantity at time of importation.....	1596	Gingerine.....	20
Gauging of whisky in bonded warehouse.....	1456	Girders, iron or steel.....	188
Gauze—		Girdles, silk.....	628
Bandages, cotton.....	541	Girths.....	1037
Masks.....	831	Gladiolus bulbs.....	383
Narrow pieces of.....	513	Glaziers' lead.....	278
Silk.....	613, 625	Glass, not specially provided for.....	168
Gazelle skin gloves.....	816	Aigrets.....	733
Gear—		Articles, beveled.....	158
Cutters.....	303	Balls.....	170
Wheels.....	228	Christmas trees, toys.....	718, 721
Gears, spinning.....	228	Bead curtains.....	690
Geese.....	931	Beads.....	683, 687, 690
Hybrid, as poultry.....	428	Metal-lined.....	691
Geissler tubes.....	143, 1090, 1091	Strung, consisting of small brown beads.....	691
Gelatin.....	60	Strung, on wire.....	690
Emulsion of.....	61	Unstrung.....	691
Lozenges.....	22	Bent.....	160, 161
Manufactures of.....	60, 61	Beveled.....	158, 160, 161
Printing.....	673	Blanks.....	146, 148, 171, 173
Prints.....	658	Blown—	
Gems and regali for incorporated society.....	1121	Articles of, not containers.....	146
Geometrical glass forms.....	151	Chief value.....	142, 169
General provision, unequal operation of.....	211	In a mold.....	141, 142
General trade meaning, change of classi- cation.....	1726	Bohemian.....	141, 151
Gentian:		Bombes.....	154
Extract of.....	56	Bottles.....	135, 136, 139, 140, 141
Leaves.....	65	Colored or decorated.....	147
Gerbes, fireworks.....	724	Containing merchandise dutiable at ad valorem rates.....	138
Gorman—		Containing merchandise subject to compound rates of duty.....	138
Bounty on grains.....	1534	Filled.....	140
Currency.....	1617	Printed.....	144
Export duty.....	1444	Opal.....	139
Silver.....	266	Soda.....	139
Bags.....	753	Boxes containing more than 50 square feet of.....	153
Bars.....	266	Broken.....	168, 171, 173
Sheets.....	266	Bullions or bull's-eyes.....	153
Wood pulp, manufactured.....	1180	Buttons or fish scales.....	705
Germanica or Iris Kaempferri.....	382	Canes—	
Germol.....	47	Black.....	174
Gespinst.....	271	Cornelian.....	174
Geyserite, ground.....	1130	Cats'-eye.....	157
Ghee, butter substitute.....	365	Carboys.....	135, 136
Gherkins in brine.....	374	In baskets, filled.....	138
Gig thongs, leather.....	1031	Chimneys.....	141
Gill netting, twine and webs.....	531, 532	Clock, parts of.....	154
Gimps.....	776, 777	Colored.....	158, 160, 167, 773
Beaded.....	691, 798	Common window.....	152, 153
Braid.....	790	Compositions of, not set.....	169
Wool.....	584	Crown—	
Ginger—		Ground edges.....	154
Ale.....	463	Polished.....	155
Corking and wiring charges.....	464	Silvered.....	159, 160
Beer.....	463	Unpolished.....	152, 153
Bread, or honey cake.....	363		
Cordial.....	448		

Glass—Continued.	Page.
Cut, thermometers.....	147
Cylinder—	
Beveled and polished.....	161
Colored.....	161
Polished.....	155
Polished and beveled.....	161
Silvered.....	159, 160
Unpolished.....	152, 153
Decanters.....	136, 140, 141
Decorated.....	453
Demijohns.....	135, 136
Disks.....	1002
For optical instruments.....	1002
For surgical or dental mirrors.....	160
Goggle.....	162, 163
Molded.....	151, 171
Electrochemistry apparatus.....	143
Embossed.....	160, 161
Enamel, white.....	1001
Enameled.....	160, 161, 174
Engraved.....	139, 160, 167
Etched.....	160, 161
Flashed.....	160, 161
Flasks, willow-covered.....	325
Fluxes, not specially provided for.....	94
Fluted.....	155, 156
For microscope slides.....	153, 155
Forms, geometrical.....	151
Frosted.....	160, 161
Fruits and flowers.....	739
Funnels, colored.....	142
Ground.....	149, 160, 161, 170
Hat trimmings.....	173
Insulators, colored.....	143
Jars.....	135, 136
Containing pickles and preserves.....	1436, 1439, 1445
Fitted with stoppers.....	138
With metal covers.....	310
Lens and prism blanks.....	1002
Lenses.....	163, 164, 1089
Manufactures of, not specially provided for.....	168
Measurement of.....	154, 158
Molded articles of.....	169, 767
Mosaics.....	144, 148, 151
Muffled.....	154
Not window, but used for similar purposes.....	173
Obscured.....	160, 161
Old.....	168
Optical.....	153
Ornamented.....	160, 161
Paper weights.....	144, 149
Pendants for chandeliers.....	148
Penholders.....	285
Pens.....	144
Photobaths.....	144
Pins.....	173
Plate—	
Cast, polished, or ground.....	157, 158, 164
Rough.....	155, 156
Silvered.....	159, 160
Unsilvered.....	157, 158
Wired.....	157
Plates, rough cut or unwrought.....	1003

Glass—Continued.	Page.
Powder.....	171, 172
Prismatic.....	165, 172
Reflectors, fluted.....	144, 149, 160
Ribbed.....	155, 156
Rods—	
Black.....	174
Molded.....	144
Rolled.....	155, 156
Rondelles.....	151
Rosaries.....	173
Sanded.....	160, 161
Signs.....	141, 144
Slides—	
For magic lantern.....	164, 165
For microscopes.....	153
Spun.....	151
Stained.....	160, 161, 169
Stoppers, bottle.....	137
Strips.....	149, 163, 170, 1002
Syringes.....	145
Thermometers, etched.....	148
Tiles.....	174
Toothbrush bottle.....	879
Towel rods.....	170
Tubes.....	144, 146
Containing ethyl chloride.....	1437
Tubing.....	142
Tumblers.....	152
Vials.....	135, 136
Weight of.....	155
Wired.....	155, 156
Window—	
Broken.....	154
Common.....	152, 153
Stained or painted.....	168
Wool.....	151, 170
Glasses:	
Coquill.....	163, 165
Field.....	165, 166
Gauge.....	143, 146
Immersion object.....	166
Klinger.....	165
Nose, and stages, for microscopes.....	167
Opera.....	165, 166, 167
Diminutive, chief value bone.....	325
Plano.....	163
Reading.....	167
Hand.....	166
Small trick.....	722
Watch.....	154
Wine, trick.....	173
Glassware:	
Blown.....	141, 146
Chemical.....	139, 141, 142, 147, 151
Articles of blown glass and other material.....	147
Grinding for utility.....	147
Decorated.....	142, 1084
Utilitarian effects.....	147
With metal.....	148
Etched.....	139, 151
Gold or silver plated trimmings.....	307
Not specially provided for.....	140, 141
Opal.....	141
Ornamented.....	142
Porcelain.....	141

Glassware—Continued.	Page.	Gloves—Continued.	Page.
Pressed, flint and lime.....	168	Tilbury.....	818
Stem.....	144, 169	Unstitched.....	817
Glauber salts.....	102	Women's, cotton.....	507
Glazes, not specially provided for.....	94	Women's or children's kid or goat, "glacé" finish.....	1003
Glazing stones.....	129	Wool, with leather facing.....	815
Agate.....	178	Gloxinia bulbs.....	382
Glazed tiles.....	1088	Glucose, or grape sugar.....	344, 345
Globes:		Glue—	
Alabaster.....	840	And glue size.....	60
Marble.....	841	Pitch, marine.....	872
Gloria cloth, silk chief value.....	623, 628	Sichel.....	873
Glove—		Sturgeon spine as.....	62
Fasteners.....	275	Glue-stock liquor.....	1014
Leather.....	804, 805, 814, 817, 1029	Glued boards.....	332
Linings, part wool.....	582	Gluten biscuits.....	932
Sewing machines.....	959	Glycerin:	
Trunks.....	818	Crude.....	62
Gloves—		Refined.....	62
And bands, massage.....	825	In small packages.....	38
Angora.....	742	Glycerophosphoric acid.....	39
Arrow-point.....	815	Glycerophosphate of lime.....	20
Artificial silk.....	630	Goat—	
Cadet.....	814	Beards, bunched.....	594
Cashmere knit.....	570	Hair.....	597, 1190
Cattle hide chief value.....	1003	Dyed.....	872, 1013
Chief value of leather.....	811, 1003	Mixed.....	1190
Children's.....	814	Selected and bunched.....	1190
Cotton—		Tops.....	594
And rubber.....	496	Unfit for combing purposes.....	1013
And silk.....	508	Yarn.....	563
Embroidered.....	781	Plush.....	599
"Kid point".....	508	Goatskins.....	1521
Knitted.....	506	Cape Angora.....	593, 594, 1512
Cumulative duty on.....	815	China, mats and rugs.....	741, 747
Embroidered.....	818	Dressed.....	741
Cotton.....	793	Rugs.....	742
Leather.....	815	Undressed.....	1115
Excessive length.....	811	Wearing apparel of.....	740
Fur-lined.....	741	Goddard's plate powder.....	29
Gazelle skin.....	816	Goggles.....	161, 162
Glacé finish.....	812	Automobile.....	162, 163
Horsehide chief value.....	1003	Disks for.....	162, 163
Housemaid's—ladies'.....	812	Frames for.....	161, 162
Kid or leather.....	812, 814, 1004	Lenses for.....	164
Knitted, part wool.....	507	Gold—	
Ladies' lamb or sheep, leather.....	813	Bullion.....	956
Lamb, reinforced.....	816	Foil figures.....	760
Leather.....	817, 1003	Leaf.....	270
Embroidered.....	816	In rolls.....	270
Lined with fur.....	815	Matches, fireworks.....	724
Men's—		Medal.....	1046
Cashmere.....	568	Ore.....	1075
Cotton, knitted.....	507	Powder, as pigment.....	96
With thumb and fingers lined.....	818	Salts and compounds of.....	99
Misrepresentations of in invoice.....	812	Size or Japan.....	92
Mixed.....	814	Spanish-Cuban.....	1621
Paris point.....	816	Straw braids.....	697
Partly manufactured.....	814	Sweepings.....	1075
Pigskin chief value.....	1003	Goldfish, live.....	994
Piqué seam.....	815	Goldbeater's molds and goldbeater's skins.....	1004
Prix seam.....	815	Goldstone—Aventurine.....	768
"Schmascchen".....	812	Gong sets.....	719
Silk.....	615, 1122	Gongs or tamtams.....	887
Spear-back.....	816	Gonococcus vaccine.....	905
Taffeta.....	617		

Goods—	Page.	Grapes:	Page.
Damaged by sinking of lighter.....	1564	Almeria, gauge of.....	417
Entered for consumption prior to act of October 1, 1890.....	1595	Dried.....	414
Exported and reimported to avoid pay- ment of internal-revenue tax.....	1583	In barrels or other packages.....	417, 1465
From beyond the Cape of Good Hope....	1550	In barrels, allowance may be made for de- cay.....	1469
From Hawaiian Islands, jurisdiction....	1389	Peeled, in tins.....	407
From stranded vessel.....	1565	Grapefruit—	
Imported, theft of.....	1666	Boxes.....	320
In bond—		In packages.....	95, 418
Importation not complete.....	1592	Grapevines.....	1119
Premature protest.....	1379	Graphoscopes.....	166
Weight on withdrawal.....	1379	Grass—	
In bonded warehouses, effect of treaty, Cuban-United States.....	1525	Aigrets.....	732
In foreign bonded warehouses.....	1515	Braid.....	693
Injured within limits of port.....	1613	China.....	1005
Invoiced at an average price.....	1605	Cloth.....	694
Left in public stores, subject to certain storage and labor charges.....	1460	As paper hangings.....	667
Lost overboard after payment of duty.....	1468, 1613	Ramie.....	556
Made of mixed materials.....	885	Dog.....	982
Perishable.....	1656	Isoplepis.....	733
Subject to specific duties.....	1317	Manufactures of.....	821
Sunk in water are not "deliverable".....	1468	Piquets, ornamental grains.....	736
Warehouse over one year, act March 14, 1866.....	1598	Rugs.....	534
Goose—		Sea.....	833
Breasts, in tins.....	427	Seeds.....	1109
Feathers, uncolored.....	738	Sheets.....	694
Livers, as prepared meat.....	429	Sisal.....	1004
Quills.....	731	Spanish.....	1076
Skins—		Stypa, dried and preserved.....	732
Dressed.....	747	Grasses—	
With down.....	736	And fibers.....	1004
Gooseberries, pickled.....	412	Dyed or bleached.....	737
Goring.....	774, 775	In natural state, dyed.....	739
Elastic.....	518	Ornamental.....	733
For shoes.....	802	Paper stock.....	1075
Wool.....	584	Graters, aluminum.....	250
Grain—		Gravel—ballast.....	1050
Bags.....	923, 1663	Grease:	
Leather.....	1031, 1033	Brown wool, degrass.....	69
Grains—		Curriers.....	68
Drugs advanced.....	54	For dressing leather.....	1007
Drugs, crude.....	979	For soap making or stuffing or dressing leather.....	1006
Grains or splits, sheepskins.....	1117	Mineral.....	1073
Grammars:		Soluble, for softening cloth.....	73
Foreign and English.....	944	Wool, crude or refined.....	67, 69
Spanish.....	947	Greases:	
Gramophones.....	838	Combinations of.....	67
Mica washers.....	838	Containing alcohol.....	33
Points not needles.....	838	Rendered.....	67
Records, disks for making.....	838	Enfurage.....	84, 85
Granadilla, cabinet wood.....	315, 1165, 1172, 1174	Soluble.....	70
Granite.....	128, 131, 180, 181, 1129	Grease-proof paper.....	646, 650
Lanterns.....	181, 182	Great Lakes, fish caught in the.....	1066
Linoileum.....	537, 538	Greenhouse plants.....	383
Monuments.....	182	Green kern.....	1161, 1163
Paving stones.....	183	Grenadine.....	868
Waste.....	181	Sirup.....	461
Grape—		Grenat batteries.....	1090
Barrels, capacity of.....	417	Grindstones.....	183
Sugar or glucose.....	844, 845	Grinder, machine, power-driven.....	301
		Grinders:	
		Cast-iron.....	228, 229
		Cast-steel, not plates.....	309
		Grindstones, small.....	184

	Page.		Page.
Grit, used as abrasive.....	208	Gutta-percha—Continued.	
Gross-Almerode glass—pot clay.....	964	Manufactures of.....	820
Ground—		Recovered.....	1012
Apatite.....	887, 906	Gypsum:	
Cork, waste.....	709, 946	Crude, ground or calcined.....	112, 113
Corundum.....	987	Plates.....	133
Gas retort, carbon.....	129		
Geysersite.....	1130	H	
Glass.....	170	Haarlem oil in small bottles.....	38
Limestone.....	1009	Haemometers.....	166
Olive nuts.....	872	Haidebrooms.....	699
Orris root.....	57	Hair:	
Rice.....	362	Alpaca.....	592
Sulphur.....	1133.	Animal, not specially provided for.....	1012
Sumac.....	1133	Angora goat.....	592
Grouse, prohibition of importation of.....	731	Rabbit.....	595
Guaical:		Badger.....	700
Absolute.....	23	Bleached.....	1012
Carbonate.....	39, 40	Bow.....	1013
Guano.....	1008	Camel's and other like animals.....	1182-1187
Guarana.....	982	Cashmere goat.....	593
Gubinol metal leaf.....	267	Cattle, cleaned but not manufactured.....	1012
Guignet's green.....	90	China goat.....	1012
Guinea fowls as poultry.....	429	Clippers.....	239, 242
Guipure lace braids.....	790	Crêpe.....	750
Gum—		Crimpers, cotton and metal.....	527
Arabic.....	62	Curled, suitable for beds.....	750
Balbuse.....	980	Dress goods.....	578
Benzoin, crude.....	980	Fabrics, cotton and calf-hair.....	528
Camphor.....	62	Goat.....	597, 1014
Copal, resin.....	1011	Common.....	1013
Chewing, confectionery.....	346	Unfit for combing purposes.....	1013
Ester.....	56	Dyed.....	1013
Resin.....	1011	Hogs or pigs.....	1013
Resin or rosin.....	979, 983	Horse, unmanufactured.....	1012
Senegal.....	62	Human.....	749
Spruce.....	983	Nets and nettings of human hair.....	749, 750, 781
Not a drug.....	55	Ornaments, jewelry.....	752
Styrax.....	27	Pencils in quills.....	698
Substitute.....	64	Press cloth of camel and goat hair.....	751
Tragacanth.....	983	Press cloth mats.....	565
Gummed paper.....	650, 661, 652	Rolls, artificial silk.....	631
Gums.....	62, 1011	Rolls, known as "rats".....	581, 582
Drugs advanced.....	54	Short, unfit for spinning.....	595
Drugs, crude.....	979	Squirrel.....	1013
Gun—		Tops, human.....	561, 750
Blocks.....	334-336, 1164, 1168, 1172	Haircloth, known as crinoline.....	750
Wads.....	749	"Hair seating".....	750
Gun-barrel molds.....	202-204	Hairpin cabinets, entireties.....	286
Gunpowder.....	1011	Hairpins:	
Gunstocks.....	249, 1168	Collodion.....	54
Guns—		Gold or silver plated.....	306
And parts of.....	247-249	Lacquered.....	286
Miniature.....	311	Metal.....	285, 287
Not personal or household effects.....	953, 1158	Or safety pins of iron or steel.....	286
Turkish.....	248	Silk covered.....	623
With extra locks.....	249	Halawy, a sweetmeat.....	412
Gun-metal articles.....	760	Half hose:	
Gunny—		Cotton.....	504-509
Bags.....	926	Wool.....	563
Cloth.....	925, 929	Half-tone plates.....	257-258
Old, as paper stock.....	1075	Halibut:	
Gut leaders for fishing lines.....	256, 257	Fletched.....	398
Gutta-percha.....	822, 1012	Fresh.....	991
Belting scraps.....	866	Frozen.....	992
Crude.....	1011	Packed in ice.....	991, 993
		Skinned or boned and salted.....	403

	Page.		Page.
Halters and blankets.....	899	Hangings, paper, composed wholly or in chief	
Hamburg net.....	803	value of paper.....	664, 666
Hammer molds.....	202, 203, 204	Hansa yellow.....	41
Hammers:		Happifats, toys.....	711
Blacksmiths'.....	223	Hard rubber:	
Pneumatic.....	301	Druggists' sundries.....	822
Spike.....	223	Manufactures of.....	827
Tuning.....	834	For mouthpieces.....	859
Hammocks, hemp and sisal.....	556	Hardware fixtures, gold or silver plated.....	306
Hampers, willow.....	328	Hardwood flooring, bored.....	332
Hams.....	1043	Hares:	
In tins or smoked.....	1044	Combings of, as fur waste.....	864
Hand—		Dead.....	426
Bag frames, gold or silver plated.....	307	Skins of, undressed.....	1115
Bags, silver.....	765	Harmonicas.....	719
Mirrors.....	168, 170	Harness.....	1028
Handle bolts, wood.....	1164	And carriage not household effects.....	1159
Handles:		Chiefly of leather.....	1031
"Anticor".....	238	Twine.....	531
Broom.....	1164	Harrows, tooth and disk.....	890
Cane and umbrella, jeweled.....	312	Harvesters.....	890
Celluloid.....	52, 862	Hassocks of wool carpeting.....	590
Collodion or pyroxylin on umbrella		Hatbands:	
sticks.....	862	Cotton, woven as trimmings.....	799
Curling stone.....	978	Silk.....	611
Knife.....	236, 237	Wearing apparel.....	498
Nickel-plated, knives and forks with.....	244	Hat—	
Penholder.....	884	Bodies:	
Razor.....	239, 240	Cotton.....	1218
Stamped from steel sheets.....	206	Fur.....	745
Umbrella.....	261	Braids.....	695, 697
Hand-dipped marbelized paper.....	649	Horsehair.....	696, 882
Handmade—		Ramie.....	692
Copying papers.....	662	Straw, split and twisted.....	876
India transfer paper.....	663	Crowns—	
Paper.....	636, 661	Spangled.....	689
Printing paper.....	662	Wool and silk.....	570
Surface-coated paper.....	662	Forms, cotton sparterie.....	528
Transfer and printing paper.....	663	Foundations.....	515
Hand-painted—		Leathers.....	810
Menu cards.....	847	Linings, cotton.....	497
Place cards.....	843	Ornaments.....	698
Paper hangings.....	667	Silk.....	615
Silk squares.....	847	Sweats, leather.....	808
Handsaws.....	260	Trimmings.....	740, 803
Hand-sewing needles.....	1059	Glass.....	173
Handkerchiefs:		Made from split straws.....	823
Bandana in the piece as wearing apparel.....	498	Metal galloons, artificial leaves, and	
Boxes.....	1429	beaded ornaments.....	691
Cambrie linen.....	548	Wire.....	212, 213, 215, 218
Cotton.....	493	Hatpin tops.....	768, 770
Embroidered.....	774	Hatpins.....	285, 758, 760, 1363
Hemmed or hemstitched.....	495, 799	Iron or steel shafts for.....	216
In the piece.....	494	With beaded heads.....	687
Pearl stitched.....	494	Hat sides, tips and strips.....	794
Drawn-work.....	494	Hats:	
Embroidered linen.....	802	Artificial silk.....	631
Embroidered or scalloped.....	781	Cotton braid, untrimmed.....	496
Flax, hemp, or ramie.....	548	Crêpe paper.....	713
Hemstitched lace-trimmed linen.....	795	Embroidered Mexican.....	1158
In the piece, white silk.....	611	Feather, in part of metal.....	376
Lace.....	773, 787	Felt, varnished.....	583
Hemstitched.....	795	Fur.....	751
Powder puff.....	611	Trimmed.....	616
Silk.....	610	Horsehair.....	690

Hats—Continued.	Page.	Hemp—Continued.	Page.
Imitation—		Seed.....	1107
Horsehair.....	632	Oil.....	70
Panama, paper.....	640	Seins.....	532
Straw.....	633	Soles.....	497
Leather sweatbands for.....	810	Threads, twines, and cords.....	530
Mexican.....	696	Waste paper stock.....	1075
Made of ramie braids.....	692	Webs.....	532
Miners', of wool.....	583	Yarns.....	531
Miniature.....	824	Hemstitched—	
Panama straw.....	696	Initial handkerchiefs.....	800
Paper, varnished.....	680	Lace-trimmed handkerchiefs.....	795
Silk and wool.....	581, 599	Lawns, cotton.....	487, 800
Silk and veiling.....	615	Herbaceous peony.....	382
Straw.....	693, 694	Herberling machines, two-needle.....	959
Tagal.....	697	Herbs:	
Trimmed.....	615, 616, 694, 696	Drugs—	
Unfinished bamboo chip.....	693	Advanced.....	54
Hatters—		Crude.....	979
Fur, plucked coney skins.....	1000	In alcohol.....	35
Irons.....	226, 227	Or herb leaves, not specially provided	
Plush, silk.....	860, 861	for.....	435, 436
Hauteville stones.....	175	Hermetically sealed receptacles.....	1211
Hawaii custom duties.....	9	Herringbone braids.....	790, 801
Hawaiian Islands, imports from.....	9, 1389	Herring oil.....	67, 69
Hawsters coir.....	556	Herrings.....	400
Hay.....	379, 380	Bismarck, fish in packages.....	402
And straw, importation prohibited.....	1693	Fresh.....	989
Knives.....	243, 244	Kipperd.....	401, 404
Loaders.....	893	In kegs, spiced.....	404
Pressed in bales.....	380	Known as Russian sardines.....	403
Haussengen, or wall mottoes.....	789	Naturally frozen.....	991, 992
Hayward's Paste, sheep dip.....	1111	Packed in oil.....	400
Hazelnuts.....	422	Pickled or salted.....	989
Head—		Pickled and boned, or pickled, skinned,	
Nets.....	775	and boned.....	400, 401
Tax on alien passengers.....	12	Salted, in bulk.....	993
Headers.....	890	Smoked.....	988, 992, 993
Heading bolts, wood.....	1164	Hexamethylenetetramin.....	20
Heads—		Hickory, mountain, not ship timber.....	1168
Of game animals.....	1017	Hide—	
Stuffed and with skins.....	746	Cuttings, raw.....	1014
Heads:		Rope.....	1014
Cotton.....	511	Hides—	
Wire.....	212	And skins—	
Hearth rugs, worsted.....	571	Distinction between.....	1035, 1116
Hearts of palm trees.....	371	Indiscriminately mixed.....	1015
Henriettas, silk warp.....	628	Cattle, raw or uncured.....	1014
Hens, barred Plymouth Rock, not animals for		Buffalo.....	1015, 1117
breeding.....	899	Disinfection of.....	1546
Heddles, wire.....	212	From American cattle exported alive.....	1014
Hedge shears.....	238	Neat cattle, importation of, prohibited.....	1545, 1546
Heel plates.....	228	Raw or uncured, reciprocity provision	
Hematite, pieces of.....	771	for.....	1512, 1521
Hemlock bark, extract of.....	1136	Hydrated oxide of iron.....	23
Hemp—		High seas, merchandise from.....	6
Braids, not bleached.....	694	Highland costumes for military company, not	
Cordage.....	529, 530	regalia.....	1123, 1127
Fabrics, plain woven.....	549	Hinge blanks, iron or steel.....	223, 224
Fibers, knotted.....	532, 555	Hinges:	
Gill nets.....	532	Bronze.....	224
Hammocks.....	556	Copper.....	224
Manufacturers of.....	551, 552	Iron or steel.....	223, 224
Fiber and tow of.....	995, 996, 1004	Hinoki baskets.....	330
New Zealand, not hemp of commerce.....	1005	Hinoki or Chinese matting.....	826
Rope equipment of vessel.....	1558	Hippopotamus teeth.....	829

	Page.		Page.
Hoarhound seed.....	1107	Horns—Continued.....	
Hobnails.....	1058	Elk and moose.....	1017
Hoes, metal.....	194	Post, brass, not toys.....	722
Hoffman's Anodyne.....	1217	Horse—	
Hog:		Bandages of wool.....	567
Bristles.....	700	Blankets.....	574
Hair waste.....	1010	Clippers.....	1031
Cholera vaccine.....	906	Cloth or sacking, jute.....	557
Hogs butchered abroad.....	917	Combs.....	824
Hogsheads, empty.....	320	Pistols.....	243
Holders, bonbon.....	721	Horsehair:	
Holder finishers.....	788	Artificial.....	629
Hollands, cotton window.....	489, 491, 492, 493	Braids.....	696
Hollow ware.....	228	Cloth.....	563
Aluminum.....	250, 251	Drawn.....	1012
Cast.....	226, 227	For musical instruments.....	1012
Enameled.....	251	For violin bows.....	1013
Iron or steel.....	250	Hats.....	630
Metal.....	313	Hat braids.....	696, 882
Holy water from Lourdes, not mineral water.....	1050	Mattresses.....	632
Holy-water stoup as regalia.....	1125	Wearing apparel—hats, silk, wool, similitude.....	631
Holly:		Horsehides.....	1116
Cuttings.....	1056	Horse-radish root not vegetables.....	395
Plants, transplanted.....	388	Horserakes.....	890
Hones and whetstones.....	1015	Horseshoe—	
Honey.....	380	Calks.....	195
Cake, or so-called gingerbread.....	363	Nails.....	1058
Honestone.....	132	Nail plates, steel.....	1059
Honiton braids.....	790	Horseshoes.....	1058
Hoods, fringed.....	580	Horse-show prize.....	1046
Fur.....	751	Horses—	
Straw.....	693	And mules, dutiable.....	357
Hoofs, unmanufactured.....	1015	Family carriage as household effects.....	953
Hoof picks, not saddlery.....	1031	Imported for breeding purposes, regulations.....	899
Hooks—		Killed while in United States under bond.....	903
And eyes.....	273, 276	Physician's not household effects.....	953
Imported without eyes.....	275	Not personal effects.....	1155
Iron, carding machine.....	313	Ponies as.....	357
Snelled.....	256	Straying across the boundary.....	897, 908
Watch-guard, plated.....	313	Taken abroad for personal use.....	913
Hoop—		Teams of emigrants.....	903, 904
Iron.....	195, 197	Hose:	
Or steel coated with zinc, spelter, or other metal.....	197, 198, 199	Canvas, flax.....	536
Cut to length for baling purposes.....	1016	Cotton—	
Manufactures of, not specially provided for.....	219	Fashioned on knitting machine.....	504, 505, 507
Galvanized.....	197, 198, 199	Silk, clocked.....	508
Steel.....	195, 196, 204	Wire-bound.....	234
Hoops:		Flume, cotton, flax, ramie, or jute.....	536
Barrel, iron or steel.....	195, 196	Hydraulic, of cotton or flax, hemp, ramie, or jute.....	536
Steel.....	204	Seamless flax, fire.....	536
Hop—		Silk.....	1122
Bitter ale.....	465	Wool, knitted.....	563
Cloth, jute.....	544	Hosiery:	
Roots.....	1016	Clocked and embroidered.....	507, 508
Waste or lupuline.....	380	Cotton and silk.....	506
Hops.....	380	Cotton, chain stitched.....	507
Horn:		Embroidered.....	793
Manufactures of.....	821	Fashioned.....	505
Pins, metal, ornamented.....	765	Value of, for rate of duty.....	508
Strips.....	822, 824, 826, 1017	Wool and cotton.....	571
Horns—		Wool cashmere, knit.....	570
And parts of, unmanufactured.....	1017	Woolen, knit.....	568
Automobile.....	221		
Bicycle.....	222		

	Page.		Page.
Hospital utensils, enameled ware.....	250	Images, sacred fixtures.....	1122, 1127
Hotel ware, vitrified.....	120	Imitation—	
Hours of business, extension of.....	1588	Birds, artificial leaves.....	736
House furniture, wood.....	331	Bronze statuary.....	843
Household effects.....	951-954, 1159	Cameos.....	767
Not in use one year prior to importation.....	953	Coral.....	768, 771
Hub blocks.....	1173	Necklaces.....	765
Hubs for wheels.....	1164	Foxtails.....	746
Huck toweling.....	550, 551	Fruits, confectionery.....	347
Huckaback towels, fringed.....	556	Horsehair—	
Huckleberry cider.....	378	Braids.....	632
Hulled barley.....	359	Hats.....	632
Human—		Japan paper.....	636, 661
Ear bones, mounted.....	1115	Jet.....	170
Hair.....	749, 750	Articles.....	760
Tops.....	750	Bead necklaces.....	683
Hunting knives.....	241, 243, 244	Lace.....	792
Hyacinth bulbs and clumps.....	382, 385	Articles.....	795
Hybrid poultry—wild geese.....	931	Wearing apparel.....	795
Hydrate of—		Meerschaum pipes.....	857
Potash.....	1094	Onyx.....	768
Soda.....	102, 103	Panama hats.....	640
Hydraulic—		Parchment—	
Hose, cotton, flax, hemp, ramie, jute....	536, 537	Grease-proof paper.....	650
Motor and pump.....	1053	Paper.....	644
Hydron blue.....	894	Pearls.....	687, 769, 771, 773
Hydroaeroplanes as vessels.....	1559	Pearl—	
Hydrochinon.....	46	Beads.....	683, 687, 689, 756
Hydrochloric or muriatic acid.....	888	Strands, necklets.....	688
Hydrographic charts.....	938	Pongee silk.....	632
Hydroxide of chrome.....	964	Precious stones....	170, 172, 687, 766, 768, 769, 771
"Hygeia" paper used for wrapping straws		Rock crystal—	
and toothpicks.....	858	In form of lenses.....	772
Hygrometers:		Intaglios ornamented by superadded	
Philosophical and scientific instru-		process.....	771
ments.....	1089, 1090, 1091	Sealskins, velours as.....	571
Not miners' rescue appliances.....	1052	Shell cameos.....	771
Hymn books, Welsh.....	946	Silk yarn.....	633, 883
Hyscymus leaves.....	982	Straw hats.....	633
Hypodermic syringes, tubes for.....	235	Immediate coverings:	
Hyposulphite of soda.....	103, 104	Candy.....	346, 347, 367
Hypnol, a coal-tar preparation.....	48	Of tea.....	1145
I.		Immediate transportation—	
Ice.....	1017	Without appraisalment, act of June 10,	
Tanks, china or earthenware.....	121	1880.....	1689
Ice-wool squares.....	582	Bills of lading for regulations governing..	1689
Iceland moss.....	833	Duty accrues under law in force at time	
Ichtsosulfol.....	1067	of entry at destination....	1584, 1587, 1591, 1595
Ichthyol—		Entry at destination can not be made	
Oil.....	1064, 1067	until arrival of goods.....	1591
Sodium.....	1067	Entry for, not import entry.....	1290
Igniter points.....	1052	Not necessary for collector to give notice	
Ignition tubes, steel.....	236	of arrival.....	1595
Illegal—		Time in which entry must be made.....	1689
Appraisalment subject for protest....	1303, 1347	Immersion object glasses.....	166
Ascertainment of weight by appraiser....	1675	Immigrants' effects and teams.....	902-904
Entry—		Immortelles, dried or dyed....	385, 730, 733, 738, 739
Articles from Philippines.....	1607	Imogara, a vegetable in natural state.....	395
Seizure before completing entry.....	1611	Implements:	
Importation—forfeiture—absence of in-		Agricultural.....	890-893
tent to defraud.....	1738, 1746	Professional and tools of trade.....	1096, 1101
Reliquidation.....	1303, 1329	Importation:	
Seizure, jurisdiction of court.....	1739	Copyrighted books, limitation on.....	1691
Reappraisalment.....	1346	Defined.....	9, 11, 12, 1599, 1661, 1741
Illustrations for books.....	655	Fraudulent.....	1606-1611, 1738-1747
		From Danish dominions.....	1737

	Page.		Page.
Importation—Continued.		Ingot molds.....	204
From Mexico.....	1550	Ingots:	
From Panama, Canal Zone.....	1684	Bessemer steel.....	1128
Goods lost overboard after arrival.....	9	Copper.....	974
Horse exported via highway into Canada.....	917	Nickel.....	282
Into Philippines from United States.....	1531	Platinum.....	1092
Into ports in possession of enemy.....	12	Steel—	
Mail and parcel post.....	1395	Cogged.....	202, 203, 204, 262, 1128
Separate parts.....	225	Hollow.....	207
Under change in law.....	1583-1600	Ingrain carpets.....	587
Imported—		Initials:	
Merchandise—		Cotton.....	787
Not subject to tax by States.....	10, 13	Paper.....	650
What is.....	11, 12, 1661	Initialed or monogrammed embroidered arti- cles.....	799
Yachts.....	1384	Ink—	
Importer:		And ink powders.....	65
Duty of as to information..	1260, 1421, 1422, 1462	Bottles, trick.....	145
Liability of for duties.....	1230-1236, 1696-1699	In small packages.....	38
Right to possession of goods.....	1236	Printer's.....	65
Right of to protest a rate as too low.....	1369	Inlaid—	
Tentative classification of on entry.....	1726	Linoleum.....	539
Incandescent electric lamps and bulbs.....	168, 171, 173	Wood pictures.....	843
Incusted stones.....	771	Inland—	
Indelible pencils.....	1636	Charges on turkish ore.....	1440
India—		Freight.....	1302
Paper.....	680	Transportation charges.....	1451
Straw matting.....	533	Transportation of rugs to Smyrna.....	1441
India rubber—		Innocent buyer of smuggled merchandise.....	1742
And cotton wearing apparel.....	498	Insecticide—	
Balloons, uninflated.....	723	Act.....	1693
Boots and shoes.....	1218	Caustic soda.....	103
Braids, chief value cotton.....	825	Insect pests.....	1693
Brushes for copying books.....	700	Insects, dried:	
Bulbs.....	823	Drugs—	
Crude.....	1017	Advanced.....	54
Dolls.....	722	Crude.....	979
Fabrics.....	822	Insertings—	
Manufactures of.....	821	And edgings.....	786
Milk of.....	1018	Beaded.....	798
Pouches.....	826	Lace.....	774
Sheeting.....	1088	Insole leather.....	1032
Substitute.....	875	Insoling, cork.....	709
Toys.....	271	Insolvency, priority of claims.....	1696
Tubing.....	823, 824, 1090	Insolvent consignee, entry by assignee or receiver.....	1233
Indian—		Inspection of customhouse papers.....	1655
Black teapots.....	122	Inspissated ox gall.....	22
Madder.....	1041	Instructions to jury.....	1705
Moccasins.....	1037	Instruments:	
Or Palmyra fiber.....	874	Astronomers'.....	1099
Red.....	90	Dental.....	303
Indians, effects and peltries of.....	1216, 1217	Electrical, for college.....	1087
Indigo.....	1019	For unlawful practices.....	1541
Auxiliary.....	1140	Nautical.....	166
Pastes.....	1019	Optical.....	165, 166, 167, 168
Powdered.....	1020	Frames, etc., for.....	165, 166
White.....	1020	Pedicure.....	239
Indigoids.....	1019	Philosophical and scientific.....	1081, 1096
Indurated fiber wear.....	752	Professional.....	1096
Industrial—		Surgical.....	303, 312
Bulletins for gratuitous circulation.....	941	For hospital.....	1086
Diamonds, bort.....	770	Surveying.....	167
Informal entry, conditional delivery.....	1582	Insular possessions:	
Information:		Merchandise from not subject to duty.....	1713, 1714
Duty of importer to furnish.....	1260, 1421, 1422, 1462	Jurisdiction of General Appraisers over goods from.....	1388, 1389
Means of, sending samples to other ports.....	1302		
Informers, rewards to.....	1745		

Insulators:	Page.	Invoice—Continued.	Page.
For spark plug, porcelain	124	Value—Continued.	
Glass, colored	143	Higher than correct price	1295
Insurance, War Risk	1692	Currency of country of exportation	1625, 1627
Intaglios of rock crystal	771	Interest paid part of	1285
Intarsia, wooden articles inlaid with metal ..	333	Weight to be stated in terms of country of exportation	1670
Intent:		Invoicing, tobacco, requirements of	350, 353
Absence of wrongful, additional duty	1278	Iodide, potassium	65
Criminal	1260	Iodine, crude	1020
Of importer to breed animals is sufficient ..	902	Iodoform	65
To evade the law	1747	Ipecac	1020
Interest—		Iraldeine	35
On claims against the Government	1705	Iridium	1021
On unpaid duty	1698, 1705	Irish moss	1057
On tax on foreign-built yachts	1222	Iris—	
Paid part of invoice value	1285	Bulbs, dried	386
Interlining cotton and wool	567	Haempferri or Germanica bulbs	382
Internal-revenue stamps	1655	Isarol	1067
Invalid reappraisement	1346	Isinglass	60
Invoice:		Bleached	62
Abandonment of consular	1281	Japanese	62
Absence of	1247	Isle of Pines, foreign country	9
Addition of charges on by consul	1291	Iron—	
Authority of consuls to certify	1241	And cerium alloy	280
Bond for production of	1242, 1247	Band	197, 1016
Certification of	1238	Bar	186, 187
By consul of a friendly nation	1240	Billets in which charcoal is used	1021
Certified, required for entry of merchandise exceeding \$100 in value	1242	Blooms	1021
Clerical errors in	1395	Boiler, enamel lined	251
Consular, substituted for pro forma	1284	Cast—	
Copy of	1238	Hollow ware	226, 227
Corrected	1246	Andirons	226, 227
Presented before appraisement	1294	Hatters' irons	226, 227
Produced after entry	1247	Pipe	226, 227
Currency of	1236, 1237, 1622, 1624, 1625, 1627	Plates	226, 227
Presumed to be standard	1622	Sadirons	226, 227
Declarations on explanation of	1254	Stove plates	226, 227
Description, paintings includes frames	1280	Tailors' irons	226, 227
Dutiable value on	1303	Vessels	226, 227
False or fraudulent	1256, 1258, 1262, 1263	Castings	227, 228, 230, 891
Entry on	1247	Malleable iron, not specially provided for	226, 227
Faulty, does not deprive importer of right to appeal	1336	Chain or chains	230, 1024
Free goods require	1238	Charcoal	186, 187
Goods on cars arriving on different trains ..	1254	Chrome	186
Measure to be in terms of the measures of country of exportation	1670	Cotton ties	1016
Imperfect entry on	1237, 1247, 1336	Cylinders containing liquid sulphurous acid	1082
Notations on, part of entry	1291	Die blocks	204
Not evidence of title	1241	Drums	232
Packed with goods	1280	Containing glycerin	1437
Price, unit value is	1287, 1288	Cylindrical, containing chemical salts ..	233
Purchased goods to show name of seller	1238, 1240	Secondhand	234
Required for each shipment	1241	Unusual coverings for creosote oil	1432
Requirements of	1236	Floor frame	189
Shipper's declarations on	1241	Hammered, bars or shapes of, not specially provided for	186, 187
Statements in, binding on importer	1238	Hoop	197, 1016
Tare, when allowed	1667, 1668, 1670	In coils	186, 187
Triplicate, entry on	1246	Kentledge	1021
Value—		Kettles, enameled	228
Advanced by collector	1348	Links	1727
Application of, in determining rate of duty	1296	Loops	1021
Collector not bound to accept	1309	Malleable, castings of	226, 227, 891
Duty on not less than	1277, 1286	Manufactures of, not specially provided for	304

Iron—Continued.	Page.	Iron or steel—Continued.	Page.
Meteoritic.....	280	Building forms.....	188
Mill shafts, old.....	1023	Bulb beams.....	188
Ore.....	1021, 1025	Card clothing.....	225, 226
Hematite.....	1024	Car tires.....	262
Levigated or ground.....	97	Car-truck channels.....	188
Oxide of.....	95	Chain or chains.....	230, 231
Pig.....	1021, 1022	Channels, car truck.....	188
Railway bars.....	1103	Clasps.....	273
Rods.....	186, 187, 1558	Cogged ingots for railway wheels or tires.....	262
Swedish, bundles or coils.....	210	Columns T. T.....	188
Rolled, bars or shapes of, not specially provided for.....	186, 187	Corset clasps.....	212
Round.....	186, 187	Steels.....	212
Sand.....	208, 209	Crowbars.....	223
Scrap.....	1021, 1023, 1024	Deck beams.....	188
Self-heating.....	230	Dress steels.....	212, 218
Sheets.....	193	Drums for shipments of acids.....	907, 910, 911
Coated.....	200	Fence rods.....	209
Galvanized, corrugated.....	205	Fishplates.....	197
Slabs.....	1021	Flat rods.....	209, 210
Square.....	186, 187	Flues, welded, etc.....	231, 232
Structural.....	189	Forgings.....	193, 195
Sulphate of, or copperas.....	975	For locomotives.....	193
Teapots.....	229	For steam engines.....	193
Tant.....	1022	For vessels.....	193
Washers.....	224	Frames.....	188
Work, ornamental.....	189	Furnaces, welded cylindrical.....	231
Wrought—		Girders.....	188
Boiler plate.....	1025	Grit.....	208
For ships.....	193	hammers, blacksmiths'.....	223
Scrap.....	1025	Hinges or hinge blanks.....	223, 224
Sheet.....	1025	Hollow ware, enameled or glazed.....	250
Iron or steel:		Hoop, band, or scroll.....	195, 196
Allowance for rust or discoloration not made.....	219, 220	Cotton ties of.....	1016
Anchors.....	193	Manufactures of, not specially pro- vided for.....	219
Angles.....	188	Horseshoe nails.....	1058
Antifriction balls.....	193	Horsehoes.....	1058
Anvils.....	221	Hose, flexible.....	231
Articles and forms—		Ingots.....	262
Coated with zinc, spelter, or other metal.....	197, 198, 199	Jolists.....	188
Cold rolled.....	197, 198, 199, 200	Lock washers.....	223
Enameled or glazed.....	250	Locomotive tires.....	262
Galvanized.....	197, 198, 199	Nail rods.....	209, 210
Axle bars, parts of and blanks for.....	222, 223	Nails, cut.....	1058
Axles, etc., not specially provided for.....	222, 223	Nut locks, spiral.....	223
Fitted in wheels.....	222, 223	Nuts or nut blanks.....	223, 224
Balls, antifriction.....	193	Oxshoe nails.....	1058
Ball bearings.....	193	Parasol ribs or stretchers.....	261
Band.....	195, 196, 1016	Pipes.....	231, 232
Cotton ties.....	1016	Plates.....	189, 190, 191, 192
Barbed wire.....	1163	Enameled or glazed.....	250
Barrel hoops.....	195, 196	Engraved, for production of designs, etc., on glass.....	257, 258
Bars, cold rolled, polished, etc.....	209, 210	Manufactures of, not specially pro- vided for.....	219
Manufactures of, not specially pro- vided for.....	219	Posts.....	188
Beams.....	188	Railway—	
Black taggers.....	190, 191, 192	Bars.....	1103
Blacksmiths' hammers, sledges, and tongs.....	223	Tires.....	262
Blanks and blooms for railway tires.....	262	Wheels.....	262
Boiler.....	189, 190, 191, 192	Rivet rods.....	209, 210
Bolts and blanks for.....	223, 224	Rivets.....	259
Brads or sprigs.....	1058	Rods—	
Buckles, belt, trousers, etc.....	273	Flat.....	209, 210
		Tempered or partly manufactured.....	209, 210
		Wire.....	209, 210, 1058

Iron or steel—Continued.	Page.
Wire, polished.....	209, 210
Roller bearings.....	193
Rust or discoloration of, no allowance for.....	219, 220
Sand.....	208
Sashes.....	188
Screws.....	260, 261
Screw rods.....	209, 210, 211
Scroll.....	195, 196
Manufactures of, not specially pro- vided for.....	219
Shafts for hat pins.....	216
Sheets.....	189, 190, 191, 192
Cold hammered, etc.....	197, 198, 199, 200
Common or black.....	189, 190, 191, 192
Enameled or glazed.....	250
Manufactures of, not specially pro- vided for.....	199, 219
Metal, decorated in colors.....	197
Polished, etc.....	107, 198, 199, 200
Shot.....	208
Skelp.....	189, 190, 191, 192
Sledges, blacksmiths'.....	223
Snap fasteners.....	273
Spikes, cut.....	1058
Splice bars.....	197
Stays.....	231, 232
Strips, not specially provided for.....	189, 212, 213
Structural shapes.....	188
Studs.....	259
Tacks, cut.....	1058
Taggers tin.....	197, 198, 199, 200
Tanks.....	231
Terne plates, not specially provided for.....	197, 198, 199, 200, 219
Manufactures of, not specially pro- vided for.....	197, 198, 199, 200, 219
Coated with metal.....	197, 198, 199, 200
Tires, railway.....	262
Tongs, blacksmiths'.....	223
Track tools.....	223
Tubes, boiler.....	231, 232
Finished, not specially provided for.....	231
Plate metal.....	231
Welded, etc.....	231, 232
Tubing, flexible.....	231
Umbrella ribs and stretchers.....	261
Vessels.....	231
Wares, enameled or glazed.....	250
Washers.....	223, 224
Wedges.....	223
Wheels, railway.....	262
Wire rods.....	209, 210
Tempered or partly manufactured.....	209, 210
Polished.....	209, 210
Wire—	
Round.....	212, 213
Cloth.....	213
Coated.....	212, 213
Covered with cotton, silk, etc.....	212, 213
Flat.....	212, 213
Nettings.....	213
Rope.....	212, 213
Isolepsis grass.....	733
Isotonic sea water.....	48

Istle:	Page.
Cable and cordage.....	529
Dressed, dyed, or combed.....	558
Lariats.....	530
Istrian marble.....	175, 176
Italian—	
And English rye grass.....	1110
Cloth, cotton.....	487
Cloths, woolen.....	574
Lira.....	1624
Reciprocity.....	1662
Walnut flitches.....	318
Wine imported from Germany.....	1518
Ivory—	
And gold bronze statue.....	846
Borken pieces.....	828
Buttons.....	702
Carved.....	840
Drop black.....	89
For piano keys.....	837
Miniature portraits.....	852
Rough pieces.....	866
Round pieces.....	835
Sawed.....	830
Scales for razor handles.....	239
Small pieces.....	828
Toilet sets, entreties.....	828
Tusks, in natural state.....	827
Vegetable, manufactures of.....	827
Vegetable, sawed slabs.....	828
Ivy:	
Root.....	315
Leaves for confectioners' use.....	738
Iyrozalon salicylic.....	34

J.

Jackets:	
Endless felts for printing machines.....	569
Bolero, for women.....	616
Jacquette sheeting.....	490
Jacquard—	
Cards, designs.....	664, 665, 667
Fabrics.....	801
Figured—	
Cotton cloth.....	480
Flax laces.....	781
Silk goods.....	621, 623, 624
Laces.....	502
Nettings.....	563, 782
Pile fabrics.....	501
Upholstery goods.....	502, 503
Needles.....	255
Woven cotton cloth.....	504
Jade:	
Beads, necklaces of.....	764
Manufacturers of.....	179
Precious stones cut.....	767, 772
Jalap.....	1025
Jamaica rum, when a product of France.....	1514
Jams as sweetmeats.....	413
Japan—	
Isinglass.....	61, 62
Or gold size.....	92
Paper.....	636, 661
Straw matting.....	533

	Page.		Page.
Japanese—		Job's tears portieres.....	868
Handmade paper.....	663	Joists:	
Hand-painted rice-paper pictures.....	847	Iron or steel.....	188
Oak flooring.....	332, 1166	Wood, as lumber.....	1172
Paper fans.....	749	Jouets a Musique, toys.....	722
Peppermint camphor menthol.....	67	Journals, law periodicals.....	1061
Playing cards.....	676	Joss-house fittings not regalia.....	1123, 1127
Silver yen.....	1623	Joss light and stick.....	1026
Stone lanterns.....	181, 182	Juanacosta, cabinet wood.....	316
Vegetables.....	395	Judgment on bonds against partners.....	1681
Wafers, kashidane.....	932	Juglandium oil.....	1064
Wall decorations.....	852	Jugs:	
White-oak lumber.....	316, 317	Containing mineral waters.....	1443
Japanned—		Whisky, earthenware.....	1435
Upper leather, japanned calfskins.....	1037	Decorated earthenware, whisky.....	453
Ware.....	1218	Earthenware vessels not.....	453
Jardinieres, earthenware.....	121	Juice:	
Jars—		Cane, sirup of.....	337, 338, 339, 340
Containing ad valorem merchandise.....	137	Cherry.....	461
Containing fish paste.....	1441	Prepared.....	462
Earthenware.....	1431	Fruit—	
Glass.....	135, 136, 1436	Not specially provided for.....	461
Containing preserves.....	1445	Concentrated.....	462
Containing pickles and preserves.....	1439	Lemon.....	1038
Fitted with stoppers.....	138	Fortified.....	1039
For Roquefort cheese.....	1445	Lime.....	1038
With metal covers.....	310	Prune.....	247
Preparation, or scientific articles.....	1084	Sour orange.....	1038
Tea, unusual coverings.....	1442	Juniper oil.....	74, 76
Terra-cotta.....	122	Junk.....	1024, 1026
Thermo.....	145	Jurisdiction of—	
Jasmine oil.....	74, 86	Board of General Appraisers.....	1317-1398
Jasper:		Appraisements and reappraisements.....	1392
Cut.....	770	Casualty under 2984 R. S.....	1613
Manufactures of, not specially provided for.....	178	Classification of seized merchandise.....	1263, 1383
Jatropha nuts.....	425	Charges by collector.....	1391, 1393
Jellies of all kinds.....	404, 405	Currency cases.....	1620
Jelly, Bar-le-duc.....	406, 409	Discriminating duty.....	1392
Jet—		Erroneous weights.....	1394, 1675
Buckles.....	172	From and into insular possessions of United States.....	1388, 1389, 1714
Imitation.....	170	Repairs to vessels, section 3114, R. S.....	1639
Manufactured.....	177, 178	Tea standards.....	1393
Stones.....	172	Courts.....	1494-1506
Unmanufactured.....	1025	Circuit Courts.....	1503, 1505
Jewel—		Customs Appeals.....	1326, 1494, 1505
Boxes, leather or parchment.....	805	Court of Claims.....	1506
Cases, silk and plush.....	627	District courts.....	1278, 1384, 1739
Jewelry—		Supreme Court.....	1499, 1505
And parts of.....	752, 1047	Jute—	
Articles of utility as.....	760	And jute butts.....	1004, 1005
Boxes of silk, velvet and wood.....	607	And cattle hair blankets.....	554
Boxes, wood and paper, wood chief value.....	647	And metal table covers.....	557
Brushes.....	698	And cotton cloth.....	483
Imitation.....	764	Canvas.....	544
Parts of.....	753, 756	Bags—	
Jeweler's magnifying glass.....	1091	Old printed.....	546
Jewels—		Printed, striped, or twilled.....	547
For instruments other than watches or clocks.....	130	Secondhand.....	546
Molded.....	769	Sugar, imported into Porto Rico.....	1714
Round pieces of tin, zinc-coated and decorated.....	267	Old.....	1103
Watch, clock, or meter.....	288	Bagging for cotton.....	925, 928
Jew's-harps.....	719	Burlaps, dyed, colored or striped.....	1213
		Canvas or padding.....	1214
		Crash or canvas.....	557

Jute—Continued.		Page.	Knife—		Page.
Fabric—			Blades.....		236, 237, 240
Buckram.....		544	Handles.....		236, 237, 831, 884
Plain woven.....		543	Sharpeners, chief value wood.....		1015
Single warp.....		929	Steel.....		204
Twilled.....		547	Knit—		
Horse cloth.....		557	Cotton articles.....		509
In bales, allowance for tare.....		1669	Fabrics—		
Manufacturing machinery.....		299	Wool.....		563-570
Netting bags.....		554	Baby carriage robes.....		582
Padding.....	553, 555, 556, 926,	1214	Woolen hosiery and underwear.....		568
Pieces for patching.....		926	Wool wearing apparel.....		582
Rejections.....	886, 1705		Knitting—		
Rugs and carpets.....		536	Machines.....		299
Scrims.....		1214	Needles.....		252, 253
Squares.....		554	Celluloid.....		254
Thread waste.....	865, 927, 928		Knives.....		236, 237
Waste.....	927, 1075, 1077		And forks, combination.....		239
Webbing.....		542	Artists.....		243, 244
K.			Beet.....		303
Kaffee, Selig's coffee substitute.....		434	Bowie.....		245
Kale seed.....	389, 392		Bread.....		243, 244
Kalmia latifolia, species of the laurel.....		1108	Budding.....		236, 237, 238
Kamoboko, fish boned, ground, and cooked.....	401, 402		Butchers'.....		243, 244
Kaolin.....		115	Butter.....		243, 244
Karlsbader, Salz crist, as sulfate of sodium.....		103	Camping.....		245
Kashidane or Japanese Wafers.....		932	Carpenters' bench.....		243, 244
Katakuriko flour as starch.....		434	Carving.....		243, 244
Kazunoko, fish prepared.....		401	Cheese.....		243, 244
Keels, ship timber.....		1168	Clasp.....		236, 237
Keene's cement.....	112, 113		Cooks'.....		243, 244, 245
How appraised.....		1427	Corn.....		239
Kefir—			Curriers'.....		243, 244
Pills.....		20	Deer-foot handled.....		245
Seed.....		872	Drawing.....		243, 244
Kelp.....		1027	Farriers'.....		243, 244
Kentia seeds.....		1063	Fiddlers'.....		241
Kettles, enameled iron.....	228, 251		Fleshing.....		243, 244
Key chains, aluminum.....		756	For leather-cutting machines.....		958
Keys for sardine boxes.....		312	Fruit.....		243, 244, 245
Keystones, lettered.....		772	Handles, odd-shaped.....		240
Klaki wood.....		1173	Hay.....		243, 244
Kid—			Hunting.....		241, 243, 244
Gloves, ladies', embroidered.....		818	Kitchen.....		243, 244
Skins, dressed and dyed.....		742	Manicure.....		236, 237
Kieserite.....		1027	Marking of.....		236, 237, 243, 244
Kilts, Scottish.....		1127	Painters'.....		243, 244
Kimonos, brocaded velvet.....		615	Palette.....		243, 244
Kindergarten embroidery sets.....		713	Parts of.....		236, 237, 240
Kindling woods.....		1164	Partly manufactured.....		240
Kippered herring.....		404	Plumbers'.....		243, 244
In tins.....		401	Pruning.....		236, 237, 238
Kirschwasser.....		443	Shoe.....		243, 244
Reciprocity rate on.....		1520	Tanners'.....		243, 244
Kitchen—			Table.....		243, 244
Knives.....	243, 244		Value of.....		238
Utensils.....		250	Vegetable.....		243, 244
Aluminum.....		250	With nickel-plated handles.....		244
Glazed or enameled.....		252	Knots, gold, silver, etc.....		271
Kitefish.....		1113	Kohl-rabi seed.....		389
Kittpulver.....		112	Kohlenstifte crucibles.....		129
Kittool fiber.....	875, 1006		Kola nuts.....		424
Klinger glasses.....		165	Konnyaku flour.....		370
Kneecaps.....		1037	Konjak flour, bean flour.....		370
Knicker yarns.....		469	Kraft paper.....		638, 665, 668
			Kreide, dutiable as ground gypsum.....		113

	Page.		Page.
Kryofine.....	20	Ladder tapes.....	515
Kronsbeeren, cranberries, in glass jars.....	407	Ladles, aluminum.....	250
Kromoline.....	1007	Lags, card clothing.....	225
Kyanite or cyanite kaimite.....	1027	Lahn.....	271, 272
L.		Lakes—	
Labels:		Containing lead.....	97
Bottle, not part of value of merchandise.....	1438, 1439	Sap yellow.....	97
Cigar.....	657	Lamb:	
Lithographic.....	660	Fresh.....	1043
Cotton.....	517	Gloves, women's or children's.....	813, 816
Decalcomania.....	657	Lambrequins, Nottingham lace.....	782
For garments.....	511, 541	Lambskin—	
Paper.....	652, 653, 654	Pieces sewn together.....	747
Die cut.....	677	Russian.....	1116
Lithographed.....	661	Lambskins, tanned.....	1030
Surface-coated.....	645	Lame or lahn.....	271, 272
Shirt.....	519	Lamp—	
Shoe.....	517	Fringes.....	684
Lac dye.....	1027	Shades.....	782
Lace:		Bamboo.....	327
Articles.....	773, 795	Enameled steel.....	251
Beaded.....	798	In part of braid.....	782
Black thread.....	804	Reflectors, enameled steel.....	251
Braids, cotton chief value.....	801	Wicking.....	511, 515, 519
Buttons.....	705	Lamps:	
Collars.....	795	Alabaster.....	840
Covered bone buttons.....	706	Altar, not regalia.....	1123
Curtains, made on the Nottingham machine.....	795	Bicycle.....	222
Flouncings.....	795	Lenses for.....	164, 165
Handkerchiefs.....	773, 787	Ceremonial and sanctuary.....	1123
Imitation.....	773	China.....	122, 125
Napkins.....	773	Electric arc.....	307
Neckwear.....	796	Electric-light.....	168, 171, 173
Paper.....	680	Marble as work of art.....	841
Tops.....	680	Miner's, safety.....	1051
Pins, gold plated.....	761, 765	Reflectors for, glass.....	149
Portfolios to hold samples.....	670	Safety-filling apparatus.....	1051
Straw, containing cotton thread.....	695	Small pocket.....	857
Tidies.....	798	Stoneware.....	119
Trimmed wearing apparel.....	787	Table candle, with beaded shades.....	685
Wearing apparel.....	773	Lampblack.....	89
Window curtains.....	773	Lancewood, cabinet wood.....	315, 318, 1165, 1172, 1174
Made on Nottingham machine.....	523	Lanolin, adeps lane.....	67, 68
Laces.....	773-778	Lantern slides, magic.....	163, 164, 713, 722, 1085, 1087
As household effects.....	951	Lanterns:	
Braided stay.....	557	Collapsible.....	713
Composed wholly or in chief value of straw.....	693	Granite.....	181, 182
Charges for measuring.....	1461	Limestone.....	182
Coach, carriage, and automobile.....	773	Magic philosophical instruments.....	1089
Flax, Jacquard figured.....	781	Lap robes, woolen.....	573, 574
Jacquard figured.....	502	Lard.....	1028
Metal thread.....	782, 783	Compound.....	1028
Silk, composed of silk and mohair.....	802	Cracklings.....	1010
Lace-making machines.....	296	Substitutes.....	1028
Laches of importer.....	1276, 1340	Larding needles, steel.....	255
Lacings, boot, shoe, and corset, cotton.....	511	Larlats, istle.....	530
Lacquered tin boxes containing paint.....	1210	Larkspur seed.....	985
Lactarene.....	1027	Latch needles.....	252, 253
Lactate of lime.....	19	Lathes:	
Lactic fennet, sugar of milk by similtude.....	1048	Jewelers'.....	301
Lactophenia.....	23	Wood.....	1164
Lactoscopes.....	150	Lath yarn, tarred.....	530
Lactucarium.....	985	Lauan wood, sawed lumber.....	318
Lac spirits, so-called.....	92, 1212	Laudnum and other preparations of opium.....	77
		Laurel.....	1108
		Root.....	315
		Water, medicinal preparation.....	84

	Page.		Page.
Lava.....	180, 1028	Leakage—	
Blocks for retort linings.....	108	In public stores.....	1613
Stone.....	181-183	Not a casualty under section 2984, R. S. .	1613
Tips.....	133, 134	Of sake.....	452, 453
Lavallieres.....	1363	Of vermuth.....	452
Lavender—		Leather:	
Flowers, dried.....	85	Apron.....	1031
Oil.....	74	Bags—	
Mixed with turpentine, chemical		Containing opera glasses.....	810, 811
compound.....	74	Fitted.....	805
Law journals, periodicals.....	1061	Band.....	1028
Lawn—		Baskets, fitted.....	805
Mowers.....	893	Belting.....	1028
Rakes.....	892	And laces.....	808
Sand.....	1131	Cut to form, distinction.....	807
Lawns:		Belts.....	805
Cotton hemstitched.....	487	For making automobile treads.....	1030
Tucked and hemstitched.....	527	Bends.....	1028, 1030
Lead:		Board.....	1029
Acetate of.....	91	Boots.....	1028
And tin dross.....	281	Books.....	671
Blocks and bars.....	278	Book backs.....	809
Buckles.....	279	Boxes, fitted.....	805
Bullion—		Calfskin, tanned.....	1028
Or base bullion, weight of.....	278	Cardcases.....	805
Refining and smelting of.....	1573	Cases—	
Refined in bonded warehouse, by-		Cigar.....	807
product of.....	1572	Containing combs.....	1445
Smelted in bond.....	1572	Containing bottles.....	809
Busts.....	279	Empty.....	809
Colors not containing quicksilver.....	97	Fitted.....	805, 807, 808
Compounds n. s. p. f.....	91	For needles.....	1444
Dross, weight.....	278	For opera glasses.....	1441
Grids.....	279	For watches.....	1445
In pigs, bars.....	278	Pocket toilet.....	807
Nitrate of.....	91, 341	Coverings.....	1437
Ores.....	276	Cue tips.....	806
Sampling and assaying.....	277	Cups.....	806
Smelting in bond.....	1570	Cordovan.....	1038
Wastage allowance on.....	1573	Cut into forms or shapes.....	810, 1032
Pellets for air rifles.....	278	Diced not enameled.....	1032
Pencils.....	674, 853, 854	Duty on, under acts of 1861 and 1862.....	1038
Pigments.....	91	Enamel upholstery.....	804
Pipe.....	278	Enameled.....	1029
Red.....	91	From sealskins.....	1033
Sheets.....	278	Gaufrage.....	1032, 1037
Shot.....	278	Gig thongs.....	1031
White.....	91	Glove.....	1029
Acetate of.....	91	"Dressed lambskins".....	805
Withdrawn from bonded smelting ware-		Gloves.....	805, 811, 814, 817, 1004
house.....	1572	Cumulative duties on.....	817
For construction of vessels.....	1559	Embroidered.....	816
Wire.....	278	"Lined".....	815, 817
Lead-bearing ores.....	276	More than three single cords or	
Leaders, gut, for fishing lines.....	256, 257	strands.....	817
Leaf:		Grain.....	1031, 1033
Aluminum.....	267	Harness.....	1028
Bronze.....	267	And lithographic roller leather.....	1033
Dutch metal.....	267	Heel lifts.....	810
Gold.....	270	Insole.....	1032
Silver.....	270	Japanned upper.....	1037
Tobacco.....	352	Jewel boxes.....	805
In bonded warehouse, weight of.....	1594	Laces and belting.....	808
Scrap of.....	354	Library or desk sets, metal chief value..	808
Suitable for cigar wrappers.....	349	Moccasins.....	1030

	Page.		Page.
Leather—Continued.		Lemonade	463
Pianofortes.....	804	Lemon-grass oil.....	74
Pocketbooks.....	805	Lemons:	
Portfolios, fitted.....	805	Bought in bulk and wrapped separately	
Razor straps.....	1033	for preservation.....	1451
Rough.....	1033	Halved, in brine.....	998
Saddle.....	1028	In packages.....	418
Saddlery.....	1028	Leno cloth cotton	487
Satchels, fitted.....	805	Leopard and tiger skins	747
Scrap or waste.....	1010, 1034	Leopards and lions, not animals for breeding	902
Seal, split.....	1033	Lenses:	
Settee.....	333	Bicycle lamp.....	164, 165
Shoe—		Bull's-eye.....	164
Laces.....	1028	Condenser.....	164
Uppers or vamps.....	1028	Eyeglass.....	164
Shoes.....	1028, 1030	Fresnel.....	164
Smokers' articles.....	857	Glass.....	163, 164
Sole.....	1028	Goggle.....	164
Strips.....	806, 807, 1034	Imitation of rock crystal in form of.....	772
For auto treads.....	1034	Low grade.....	164
Sweatbands for hats.....	810	Not philosophical instruments.....	165
Tobacco pouches.....	859	Objective.....	168
Trunks.....	1436	Partly manufactured.....	165
Watch guards.....	764	Pebble.....	163, 164
Whips.....	713	Photographic.....	167, 168
Leaves—		Plano-convex.....	164
And roots.....	65	Portrait, patent.....	168
And shells of cocoa.....	971	Projection.....	164, 165, 167
Artificial.....	717, 736, 739	Spectacle.....	152, 164
Buchu.....	65	Lentils—	
Coca.....	65	And beans.....	365, 366
Drugs—		German bounty on.....	1534
Advanced.....	54	Split.....	371
Crude.....	979	Lentiscum or Lentiscus.....	1139
Erika.....	731	Letter paper.....	661
Fern.....	732	Lever and Gothrough machines.....	787
For confectioners' use.....	738	Lever laces ornamented with beads.....	787
For culinary purposes.....	435, 436	Levigated iron ore.....	97
Gentian.....	65	Liability of—	
Medicinal in alcohol.....	35	Collector of customs—	
Ornamental.....	734, 737	Acts of predecessor.....	1619
Palm, bleached and dried.....	734	Delivery without bill of lading.....	1232
Paper.....	734	For unlawful detention of goods.....	1235
Preserved beech.....	732	For decisions from which appeal may	
Rose.....	981	be taken.....	1490
Thyme.....	983	For following instructions of Secre-	
Lectern for church, work of art	1205	tary of Treasury.....	1235, 1619
Ledger paper.....	661	Consignee for duty.....	1231, 1232, 1376
Leeches.....	1038	Customs broker for duty.....	1231, 1233
Legality of—		Importer for duties.....	1230,
Appraisement.....	1301, 1354, 1309	1236, 1384, 1696, 1698, 1699	
Currency circular.....	1625	Under common carriers' bond.....	1613
Reappraisement proceedings.....	1392	Surety on bond.....	1682
Leghorn braid, plaits and strips.....	694	Lichens:	
Legumes from China.....	395	Drugs—	
Leicester wool.....	1182, 1188	Advanced.....	54
Lekin tax.....	1438	Crude.....	979
Lemon—		Lichi nuts	425
Boxes.....	320, 321, 1439	Licorice:	
Reimported.....	322	Extracts of.....	66
Undervaluation of.....	1283	Root.....	65
Juice.....	1038	Wafers, confectionery.....	347
Fortified.....	1039	Lien:	
Oil.....	74	Carrier's, for duty paid.....	1232
Peel, preserved, candied, or preserved ...	419	Of Government for duty.....	1697
Squash.....	462	Liens for freight.....	1645-1648

	Page.		Page.
Lifeboat models.....	1053	Linotype machines.....	958
Lifeboats and life-saving apparatus.....	1039	Lions and leopards not animals for breeding.....	902
Lighterage:		Linseed—	
Not a dutiable charge.....	1429	And flaxseed and other oil seed.....	389
Charges must be specified in invoice.....	1441	Oil cake, drawback on.....	1577
Lightering is not unloading.....	1642	Oil, raw, boiled, or oxidized.....	70
Lighters, automatic.....	307, 857	Liqueur.....	443, 1517
Light oil, crude.....	49	de Lavelle.....	36
Lignum-vitæ:		Liquid—	
Cabinet wood.....	315, 1174	Albumen.....	62
Bowling-ball blocks.....	1171	Creosote.....	970
Lily—		In tins not tare.....	1669
Bulbs.....	373, 382	Liquidation:	
Buds.....	386	Constructive, on warehouse with-	
Flowers.....	373	drawals.....	1379, 1390
Roots.....	371, 396	Date of, what is.....	1390
Of the valley clumps and pips.....	382	Errors in, authority of Secretary of Treas-	
Roots.....	386, 1057	ury to correct.....	1479
Lime.....	111	Finality of.....	1380-1390, 1589
Artificial sulphate of.....	87	Involving less than \$1.....	7
Borate of.....	954	More than one year after entry.....	1480-1490
Cement.....	112	Protest after, time for.....	1358
Chloride of.....	30	Protest filed before.....	1401, 1412
Citrate of.....	66	On value higher than proclaimed by Sec-	
Juice.....	1038	retary.....	1623
Powder.....	19	On invoiced or appraised value.....	1303
Sulphate of, unground.....	112, 114	Pending appeal for reappraise-	
Vienna.....	112	ment.....	1388, 1348, 1480
Limes—		Reappraisement after.....	1346, 1347
In brine.....	375, 998	Tentative not binding.....	1383, 1392
In packages.....	418	Warehouse entries.....	1358, 1420
Oil of.....	74	Liquor:	
Limestone.....	180, 181, 1129	Glue-stock.....	1014
Articles carved.....	843	Shortage of.....	451
Ground.....	1009	Theft of.....	451
Lanterns.....	182	Liquors:	
Rock asphalt.....	1039	Allowance for breakage or leakage.....	448, 449
Limitation—		And wines not household effects.....	953
To proceedings for forfeiture of smuggled		Coloring for.....	54
merchandise.....	1742	Defined.....	445
Statute of.....	1480-1490	In bottles or jugs, shortage in.....	455
Liniments, proprietary.....	34	In bottles, gauge of.....	1675
Lincoln sheep, pure-bred.....	901	Manufactured of domestic spirits for ex-	
Lincolnshire, wool.....	1182	portation.....	1569
Lincrusta Walton paper hangings.....	669	Not personal effects.....	1153
Linea—		Reimported.....	1583
Bobbins.....	542, 790	Shortage of.....	452
Cambric handkerchiefs.....	548, 549	Litharge.....	91
Damask.....	551	Lithographed—	
Handkerchiefs, embroidered.....	795	Figures.....	721
Map.....	673	Paper-box tops.....	656
Or flax laces.....	777	Paper labels.....	661
Articles embroidered or initialed.....	799	Photo frames.....	656
Shirt collars and cuffs.....	539	Placards.....	656
Tapes.....	542, 556, 557	Show cards.....	658
Towels, fringed and reversed.....	555	Wall pockets.....	659
Weight of.....	555	Lithographic—	
Linings:		Calendars.....	657
Cotton, silk striped.....	493	Cigar—	
Coke oven, fire brick.....	107	Bands.....	660
Retort, lava blocks for.....	108	Labels.....	660
Silk-striped sleeve.....	489	Plates.....	257, 258
Trimnings.....	803	Stone.....	257, 258
Linoleum.....	537	Post cards.....	658
Granite and plank.....	538	Presses.....	299
Inlaid, oak plank.....	539		

Machines—Continued.	Page.		Page.
Lever and Gothrough	787	Magnesite brick	107
Linotype	958	Crude or calcined	1041
List of, not machine tools	301	Ground	1041
Meat-slicing	300	Magnesium	263
Moving-picture	167	Flour	264
Olive-oil, not scientific apparatus	1088	Powder and ribbon	264
Paper-punching	297	Tips, nonmetallic	132
Parts of	230, 298	Magnets	1216
Pneumatic, scientific apparatus	1083	Magnetic compasses	1090
Sand-blast	958	Magneto—	
Sewing	958	Interrupters, chief value platinum wire	1093
Sludge	958	Windings and condensers	221
Sugar-making	890	Magnifying glass, jeweler's	1091
Tar and oil spreading	958	Magnums, champagne in	451
Thrashing	890	Mahogany:	
Ticket-numbering	1054	Cabinet wood	315, 317, 1172, 1174
Testing	303	Crotches	1178
Telegraphing, fire-alarm	1055	Logs	318, 1178
Typesetting	958	Mail importations:	
Machinery:		Boards' jurisdiction over	130, 1367
Cost of "putting up and knocking down"	1441	Cigars prohibited	356
Belting	513	Formal entry of	1712
Cases, specially ordered as usual coverings	1443	Parcel post, additional duty on	1283
Cigarette	312	Maine, produce of the forests of	1219
Cream separator, steel hoods or bowls for	205	Maitrank essenz	35
For disabled foreign vessel, dutiable	1661	Maize or corn	976
For use in the manufacture of sugar	890	Majoram—	
Imported for repairs	1554, 1555, 1557	Leaves	983
Jute-manufacturing	299	Seed	391
Mining	302	Malacca articles or rattan	335
Parts, cast-iron	229, 230, 302	Malachite:	
Steam-plow	893	Manufactures of	178
Textile, parts	229	Vases	180
Unassembled	226	Maline or mechin nets	788
Mackerel	990	Malleable-iron castings:	
Fresh	991	Not specially provided for	226-229
Frozen	992	Machined	229
Packed in ice	993	Mallein antitoxin	905, 906
Madder, Indian	1041	Malt—	
"Made up into articles" definition of term	228	Extract:	
Madras:		Fluid	460
Count of threads	488	In tins	460
Curtain goods	486	Johann Hoff's	461
Muslin	481, 485, 486	Solid of condensed	460, 461
Curtains	502	Tropon	21
Shirts and vestings	485	Mandatory provisions of sections 2901 and 2939, R. S.	1632
Magazines:		Mandamus	1326
Fashion	944	Manifest, articles not on	1643
Lithographically printed	655	Manifest clerical errors	1265-1292, 1480, 1484, 1485, 1486
Illustrations for	1203	Additional duty remitted only when result of	1265
Old	1061	Additions on invoice not on entry as	1287, 1288
Maggi beefextract or Maggiessence	377	Authority of Secretary of the Treasury to correct	1479
Maggi's soup tablets	371	Commission included in, by importer not	1272, 1273, 1274
Magio-lantern—		Defined	1272, 1274
Parts, toy	713	Error in translation as	1486
Scientific and philosophical instrument	1085, 1087	Excessive valuation in invoice as	1486
Slides, glass	164, 165, 722	Intentional statement of value not	1268, 1271
Magio lanterns	719, 1090	Must be apparent in the papers	1272, 1274
Toy	713	Shipment of wrong goods not	1279
Magnesia—		Manifold paper	646
Articles	126, 132	Mandolin picks	836
Brick	108		
Calcined	66		
Carbonate of	66		
Precipitated	66		
Sulphate of	66		
Rings	129, 132		

	Page.		Page.
Manganese—		Marble—Continued.	
And iron alloy.....	186	Mantels.....	178, 841, 844
Oxide and ore.....	1041	Manufactures of.....	177, 178, 841, 842
Metal.....	280	Monument.....	1203
Mangrove extract.....	58, 1138	Mosaic—	
Mangel-wurzel seed.....	1107	Cubes of.....	174, 175
Manicure—		Pictures.....	180
Knives.....	236, 237	Pictures for a church.....	1204
Sticks.....	334	Mosaics.....	177
Manila—		Panel.....	849
Cables and cordage.....	529	Paving tiles.....	174, 175, 177
Fiber, unmanufactured.....	1004	Pedestal.....	844
Hemp plaits.....	694	Polishers.....	131, 132
Material for the construction or equip- ment of vessels.....	1558	Slabs.....	174, 175
Manna.....	1042	Specially provided for.....	174, 175
Mantles—		Statue.....	846
And burners, not entireties.....	281	Statuary.....	849
For oil burners.....	280	From designs by a sculptor.....	849
For Welsbach burners.....	281, 282	With bronze head.....	850
Iron castings for, as manufactures of metal.....	229	Vases.....	845
Marble, as manufactures of marble.....	178, 844	Waste, crushed and screened.....	128, 131
Slate.....	184	Marbleized paper.....	650
Tile.....	108, 109	Marbles, toy.....	710
Manuals of logarithms as books in foreign language.....	944	Marchpane or Marzipan confectionery.....	364
"Manufacture" defined.....	268, 744, 832, 1728	Marine glue pitch.....	872
Manufactured articles not specially provided for.....	866-876	Marischino—	
Manures.....	1008	Cherries.....	407, 412, 413
Manuscripts.....	1042	Figs in.....	410
Maple—		Market value:	
Leaves for confectioners' use.....	738	Additions—	
Sap, sugars from.....	338, 339	To make on consigned goods.....	1283
Sirup or maple sugar.....	344	Importers right to make.....	1253
sugar and maple sirup.....	344	Under paragraph I.....	1265, 1281
Maps—		Ascertainment of.....	1300-1317
For the United States or Library of Con- gress.....	938	Charges included in.....	1452
Linen.....	673	Cost and charges.....	1270, 1426
Lithographic.....	672	Cost of production as.....	1313, 1314
Not specially provided for.....	669	Deductions to make.....	1265, 1275
Of the world, not a model of invention..	1054	Defined.....	1423, 1433, 1434
Printed more than 20 years.....	938	Dutiable charges, functions of appraisers.....	1270,
Text, in Latin.....	675	1434	
Marasquino, Curacoa.....	444	Evidence of.....	1308
Marbane, oil of.....	50	Less than purchase price.....	1299
Marble—		French internal revenue tax, part of....	1436
Altars.....	1205	German duty, part of.....	1435, 1444
Assyrian, inscribed, free as manuscript....	1042	Grass baskets made by Indians.....	1425
Baptismal fonts.....	1126	Price at which owner holds goods for sale.....	1238
Blocks.....	176, 177	Market baskets, willow.....	328
Capitals and bases for columns, sculp- tured.....	1201	Marking—	
Chips, crushed and screened.....	131	Country of origin.....	1540
Clock cases.....	292	Covers of catalogues.....	1540
Columns.....	844	Cutlery.....	236, 237, 243, 244
Cubes.....	177	Knives.....	243, 244
Figure and base, entirely.....	844	Books.....	1540
Flooring.....	178	Japanese articles.....	1540
Font—		Packages.....	1540
With figures in the round.....	849	Jurisdiction of board over charges for.....	1391
And seats.....	841	Paper.....	1540
Floor.....	179	Marline, cordage.....	530
Fountain.....	1516	Marly, cotton netting.....	796
Group.....	849	Marmalade as sweetmeats.....	413
Istrian.....	176	Marmite, a nonenumerated manufacture.....	427
		Marquardt-Masse pyrometer tubes.....	124
		Marrons:	
		Crude.....	1042, 1062
		In sirup.....	413

	Page.		Page.
Marsh hay, sour grass.....	380	Mats—Continued.	
Marshmallow or Althea root.....	1043	Mooj fiber.....	536
Martingale rings and loops.....	52	Oil cloth.....	537
Marzipan or Marchpane confectionery.....	364	Press cloth.....	565
Masks.....	831	Splash, of wood.....	329
And toy mustaches, paper chief value....	832	Straw.....	534, 535
Bronze.....	842	Matte—	
Composed in part of wool.....	832	Containing antimony.....	265
Cotton.....	831	Copper or regulus.....	974, 975
Draperies for street processions.....	1123	Matting:	
Gauze.....	831	Cocoea fiber.....	832
Wire.....	832	Floor, of straw.....	533
Masquerade costumes.....	1123	Hinuoki or Chinese.....	826
Master records for phonographs.....	838	Japanese floor.....	535
Masonic club, articles for, not regalia.....	1124	Rugs.....	534
Mastic asphalt.....	1040	Mattresses, horsehair.....	632
Massage bands and gloves.....	825	Mauls, as track tools.....	223
Match blocks.....	1170	Maywine leaves.....	984
Boxes.....	752	Meal:	
Trick.....	716	Almond.....	83
Matches:		Not a toilet article.....	869
Candle.....	728	Corn.....	976
Fancy.....	726	Cottonseed.....	871
Friction or lucifer.....	725, 728	Ground potato.....	1095
In books or folders.....	725	Locust-bean.....	1110
Safety.....	727	Measurement of—	
Wax.....	725	Embroidery cotton.....	471
White phosphorus, importation prohibited.....	725	Imitation precious stones.....	772
With colored sticks.....	725, 726, 727	Berries in water.....	411
Material—		Fish in tins.....	402
For construction of vessels.....	1557-1561	Files.....	246
For foreign vessels plying between Japanese ports.....	1561	Glass.....	154, 158
For international bridge.....	1651	Goods, misstated in invoice.....	1304
For paper hangings.....	665	Olives.....	417
For wall paper.....	665	Pineapple crates.....	420
For straw hats other than plateaux.....	1370	Rugs.....	588
For trimmings, silk.....	624	Measuring tapes, material for.....	537
For vessels in trade between Atlantic and Pacific ports of the United States.....	1561	Meat—	
For vestments.....	1123	And wine, extract of.....	37, 458
From foreign vessels condemned in United States.....	1651	Balls—	
From wrecked vessels.....	1651	In bullion.....	1044
Not made up into articles.....	1122	Similitude.....	1044
Of chief value, rules for determining.....	373, 876-886, 1728	In brown sauce.....	1044
Of metal, suitable for use in the manufacture of jewelry.....	753	Dried turtle.....	1046
Mati leaves.....	868	Extract in bottles.....	138
Mats:		Extracts of.....	426
Bath, cotton.....	520, 589	Prepared—	
Carpetings of wool.....	590	Duck as.....	428
Cocoea-fiber.....	832	Goose livers.....	429
Cork carpet.....	537, 538	Not specially provided for.....	1043-1046
Corticine.....	537	Tankage.....	1009
Cotton.....	588	Turt e.....	1072
Defined.....	833	Meats:	
Dog and goat skins.....	740	Canned.....	1044
Dogskin.....	743	Fresh, importation of.....	1043, 1044
Flax.....	535	Mechanical—	
Felt.....	569	Charts.....	674
Hemp.....	535	Owls.....	737
Jute.....	535	Singing birds.....	837
Linoleum.....	537, 538	Mechlin or Maline nets.....	788
		Medals—	
		And other metallic articles.....	1046
		Free entry of.....	1047
		Not trophies.....	1047
		Copper.....	1046
		Gold.....	1046

Medals—Continued.	Page.	Medicinal compounds and preparations—	Page.
Silver.....	1046	Continued.	
School principal from scholars.....	1046	Not containing alcohol—Continued.	
Religious.....	764, 1047, 1127	Menthol.....	67
Medallions:		Muriate of apomorphia.....	24
Silk.....	796	Oleo Fegate Merluzzo Ferruginose.....	22
Terra-cotta.....	122	Papain.....	34
Medicinal compounds and preparations.....	17,	Paraldehyde.....	21
	13, 33, 34, 37-39	Phenylsalicylat.....	34
Alcoholic.....	33, 37	Podophyllum.....	21
Acetosaliicylate tablets.....	34	Radiogen-trinkwasser.....	38
Acid acetosaliylid.....	34	Resorcin purified.....	22
Bovril wine.....	36	Santogen.....	36
Cannabis indica.....	35	Sodium benzoate.....	24
Chloral hydrate.....	39, 40	Sodium salicylate powder.....	24
Chlorodine; Brown's.....	36	Terpin hydrate.....	40
Confine.....	23	Vinolia.....	22
Ducro's alimentary mixture.....	35	Melada, concentrated.....	337, 338, 340
Ityozalou salicylic.....	34	Mellot flowers.....	981
Meat and wine, extract of.....	37	Melon seeds.....	391
Liqueur de laville.....	36	Peeled.....	391
Phenolphthalein.....	39	Salted.....	391
Phenacetin.....	36	Memorandum books with pencils attached..	672
Salol.....	40	Menetti multiflora, stocks, cuttings, or seed-	
Savon d'iode.....	36	lings of.....	386
Sulfunal.....	36	Mangel-wurzel seed.....	1107, 1110
Vino de salud.....	36	Menthol.....	67
Veratine.....	24	Mercurized—	
Wine of creosote, Morini's.....	36, 458	Unbleached cotton.....	481, 483
Defined.....	84	Union cloth.....	482
Descriptive term.....	23	Mercury sulphate.....	23
Exportation of, for drawback.....	1574	Mercurial preparations.....	31, 32
In ampouls, capsules, pills, tablets, etc.....	37, 38	Merino wool.....	1182
In individual packages, statutory pro-		Merchandise:	
visions for.....	37, 38	Appraisement of.....	1300-1317, 1630
Made of domestic spirits for exportation,		Defined.....	1650, 1661
drawback.....	1569	Deteriorated or unsalable.....	1576
Not containing alcohol.....	18	Entry of, required.....	1635
Absorbent cotton, medicated.....	23	Examination of.....	1342, 1630, 1632
Antiseptic cotton.....	19	From high seas.....	9
Aristol.....	22	From Philippine Islands.....	1388, 1389
Atrophine sulphate.....	22	Imported, not subject to tax by States..	13
Balsam in capsules.....	27	Injured at sea.....	1565
Bebeirine sulphate.....	22	In passengers' baggage.....	1611, 1741
Belladonna plasters as.....	86	In warehouse over three years.....	1596, 1656
Bezoar.....	18	In transit for exportation.....	7
Calcined magnesia, Henry's.....	66	Mixed.....	1393, 1651
Capsicne.....	20	On vessel in custody of Government, act	
Castor oil in capsules.....	72	of 1883.....	1598
Cherry laurel water.....	18	On vessel, not in warehouse, act 1883....	1597
Chinisol.....	19	Reshipped by mistake.....	6
Chloralhydrate.....	34	Retained in vessel.....	1651
Chrysarobin.....	18	Sent out of district for appraisal.....	1305, 1309
Cinnamic acid.....	18	Sold at sea.....	1235
Cod liver oil, De Jough's.....	23	Sold from warehouse, unpaid duty on.....	1655, 1659
Cement, Dentist's.....	20	Stored in Government buildings.....	1638
Foot shampoo.....	18	Unentered at time of passage of act (Oct.	
Gastric juice.....	18	1, 1890).....	1596
Gingerine.....	20	Unladen without permit—articles on the	
Gelatine lozenges.....	22	person.....	1610
Guaiacol carbonate.....	40	Merchant appraisers:	
Hexamethylenetetramin.....	20	Duties of.....	1631
Inspissated ox gall.....	22	Examination by.....	1309
Kefir pills.....	20	Objection to.....	1355
Krofine.....	20	Oath of.....	1355
Loretin.....	22	Reappraisement by a.....	1356
Malt trapon.....	21	Quasi judicial officer.....	1354
		Mesh, silver.....	308

	Page.		Page.
Mesh-bag frames.....	756	Mexico, importations from.....	1550
Mesh bags—		Mica.....	116
And purses.....	752, 760	Built-up.....	116
Composed of silver.....	761	Cut.....	116
Mestiza wool.....	1182	Ground.....	116
Meta toluylene diamine.....	48	Manufactures of.....	116
Metal—		Plates.....	116, 117
Alloys.....	185, 281	Scrap.....	117
And borax welding material.....	874	Splittings.....	116
And porcelain, artificial flowers of.....	738	Trimmed.....	116, 117
Babbitt.....	309	Trimmers.....	301
Boxes containing mourning pins.....	1444	Waste.....	116, 117
Bronze, in leaf.....	267	Unmanufactured.....	116
Buttons.....	273, 275	Microscopes.....	167, 723
Chromium.....	185	Accessories for, nose glasses and stages... 167	
Composition.....	268, 972	Slides, glass for..... 149, 151, 153, 155, 1090	
Coverings.....	1211	Small.....	1090, 1091
Crude, smelting and refining of.....	1573	Stages for.....	167
Drums containing creosote oil.....	1431	Microscopical—	
Dutch.....	267, 268	Slides, pathological specimens.....	875
Figures—		Prepared slides as scientific preparations. 1089	
Grotesque.....	721	Military—	
Not toys.....	311	Ornaments, jewelry..... 752, 761, 783	
Fittings for hand bags.....	754	Silk sashes.....	628
Hoes.....	194	Uniforms with swords, accouterments,	
Leaf, Gubinol.....	267	hats, and caps.....	1122
Manufactures of.....	304	Milk.....	1047
Iron sand.....	209	Albumen.....	894
Old pewter and britannia.....	1081	Condensed.....	1047
Piques.....	739	Modified.....	1048
Polish.....	28, 29	Sterilized, in cans.....	1047, 1048
Produced from iron or its ores, cast and		Mill—	
malleable, classed as steel.....	220	Buttings, lumber.....	1167, 1170
Scrap.....	973, 1023	Cranks, wrought-iron.....	193
Screw covers for jars.....	296	Irons, wrought-iron.....	193
Shades.....	252	Plates, universal.....	205
Sheets, composition.....	973	Saws.....	260
Statuary.....	848, 850, 1126	Shafting.....	202, 203
Thread—		Sweepings.....	1076, 1077
Cleaning cloths.....	272	Millboards.....	666, 668
Fabrics.....	271, 272	“Millionaire” calculating machines.....	1083
Goods.....	777, 782, 783	Mills:	
Threads.....	214, 271, 272, 273	Cold-rolling.....	301
Tubes, collapsible.....	231, 233	Corn.....	891
Umbrella sticks (tubular).....	863	Millet seed.....	1109, 1110
Unwrought, not specially provided for... 279		Hulled.....	874
Wreaths.....	737, 740	Millinery ornaments:	
Wolfram.....	185	Composed of metal.....	752
Yellow.....	268, 269	Dressed birds, suitable for..... 729, 730	
Metal-coated paper.....	647	Glass aigrets not.....	732, 733
Initials.....	677	Leaves or grass, dyed.....	736
Metallic—		Material for.....	528
Arsenic.....	907	Metal articles set with imitation precious	
Mineral substances in a crude state.... 279-282		stones.....	758, 764
Metallics.....	267, 268	Pig-bristle pompons.....	734
Metanilic acid.....	49	Steel stampings for.....	204
Metates, sandstone.....	133, 183	Millstones:	
Meteor matches.....	724	Darby Peak.....	183, 957
Meteoric irons.....	280	Not grindstones.....	957
Meters, exposure.....	308	Mineral—	
Methypyrocatechin carbonic ester.....	46	Grease.....	1073
Metis wools or Metz wools.....	1182	Objects in alcohol.....	33
Metronomes.....	834, 837	Or vitrifiable colors.....	846
Mexican—		Salts.....	1049
Hemp, hammocks.....	556	Substances.....	127, 129, 881
Onyx.....	176, 177	Articles of.....	133
Vessels, merchandise on.....	1550	Metallic.....	279

Mineral—Continued	Page.		Page.
Waters.....	1049	Modeling clay.....	866, 870
In barrels.....	466	Mohair:	
Imitation.....	465	Angora goat or alpaca hair.....	592
Natural.....	465, 466	Backings.....	1192
Nigari not.....	465, 466	Bindings.....	598
White.....	133	Braids.....	568
Minerals, crude.....	1049	Cloth.....	565, 597
Advanced in value, not specially pro-		Flocks.....	1193
vided for.....	127	Gimps.....	790
Miners'—		Imitation astrakan.....	500
Hats, of wool.....	583	Insertion.....	790
Rescue appliances.....	1051	Noils.....	1192
Caustic soda not.....	1052	Pile fabrics.....	598
Safety lamps.....	1051	Plush.....	598, 599
Minatures on copper.....	845	Wearing apparel.....	581
Mint, dried.....	981	Velvets.....	598
Mirbane, oil of.....	50	Waste.....	1192
Mirin, as still wine.....	454	Moisture—	
Mirrors.....	168	Absorbed during voyage.....	1676, 1677
Azimuth.....	166	Absorbed by tobacco in transit.....	1589
Dentists'.....	173	In wood pulp, allowance for.....	1179, 1675
Dressing.....	172	Molasses:	
Hand.....	168, 170	Barbados, fancy.....	340
In cases.....	170, 172	Commodity made from grapes not.....	462
Parabolic, and metal frames of.....	160	Concentrated and concrete.....	337, 338, 340
Plates.....	173	Diluted by salt water during voyage.....	343
Pocket.....	168	Polariscopic test of.....	342
Physicians'.....	173	Reciprocity provision for.....	1512
Puzzle.....	711	Testing under 40° and over 20 per cent	
Reflecting.....	1091	moisture.....	343
Set in carved figures.....	172	Molded—	
Shaving.....	172	Glass articles.....	767
Small, round, not toys.....	714	Jewels.....	769
Table.....	160, 168	Steel—	
Unframed, grotesque.....	720	Castings.....	202, 203, 204
Vanity case.....	755	Sheets.....	202, 203, 204
Miso, an unenumerated manufactured article.....	373	Molders' patterns.....	1053, 1054, 1554
Missal stands, regalia.....	1123, 1124, 1125, 1128	Molding, spruce.....	1166
Mistletoe.....	1056	Molds:	
Mixed—		Button.....	274, 706
Gloves.....	814	Hammer.....	202, 203, 204
Hides and skins.....	1116	Gun-barrel.....	202, 203, 204
Wools.....	1188	Ingot.....	204
Mixers, mayonnaise.....	301	Plates, or dies, cost of.....	1425
Mixture:		Molybdenite.....	128, 185, 1049
Egg, whites and yolks.....	379	Molybdenum.....	185
Of goods.....	1651	Monazite sand.....	281
Of metals, not damage.....	8	Monohydrate of soda.....	102, 103
Of sauerkraut and bologna sausage.....	374	Monogram:	
Mizutame, confectionery.....	348	Dies.....	205
Moccasins—		On earthenware.....	122
And snowshoes.....	1217	Monstrance, regalia.....	1122
Embroidered.....	1034	Montan—	
Indian.....	1037	Pitch.....	1150
Leather.....	1030	Wax.....	1150, 1151
Mocha sheepskins, hair on.....	1117	Monuments:	
Models:		Granite.....	132
Anatomical.....	1085	Marble.....	179
Cash register.....	1053	Moose:	
Lifeboat.....	1053	Carcasses of.....	426
Ice machine.....	1087	Head with skin attached.....	1017
Of invention.....	1052	Mooj mats.....	536
Plaster of Paris.....	831	Mop cloths, cotton.....	520
Machinery, wooden.....	1052	Morganite brushes.....	129
Steamship.....	1053	Morocco—	
Women's wearing apparel.....	1554, 1555	Leather.....	1036
Wooden leg.....	829	"Paper".....	652
		Skins.....	1036

	Page.		Page.
Morphia—		Moving-picture—	
Or morphine.....	77	Films.....	714, 854, 856, 1091, 1098
Sulphate of.....	77	As personal effects.....	1153
Mortadella-Salame.....	1045	Machines.....	167
Mortars, stone.....	783	Mowers, agricultural implements.....	890
Mortiser, a machine tool.....	301	Lawn, as mowers.....	893
Mosaic—		Mucilage.....	875
Cubes—		Muck bars.....	186, 187, 188
Glass.....	148	Mufflers:	
Marble.....	174, 175	Bandana, in the piece, wearing apparel..	498
Onyx.....	174, 175	Cotton.....	493, 495
Stone.....	175	Embroidered.....	774
Pictures, marble.....	180	Silks.....	610, 611
Mosaics:		And cotton.....	494
Glass.....	144, 151	Wool.....	583
Marble.....	177	Muffs:	
Moscardini, shellfish.....	1113	Foot, leather chief value.....	808
Moquet or velvet, wool.....	570	Of dressed lambskins.....	746
Moquette carpets.....	585	Mugs:	
Mosquito—		Beer.....	879
Net.....	803	China.....	122
Incense sticks.....	1026	Earthenware, decorated with pictures and letters.....	122
Moss:		Stoneware.....	119
Crude, not specially provided for.....	1055	Muguet de Mai.....	85
Manufactured or dyed.....	833	Mules.....	357, 897, 904
Natural.....	833	Mull ties.....	795
Peat.....	853	Mulligatawny paste, curry paste.....	376
Sea.....	833, 1056, 1057	Mungo wool.....	1192
Wreaths.....	833	Muriate of—	
Mosses:		Apomorphia.....	24
Drugs—		Cocaine.....	81
Advanced.....	54	Muscaria bulbs.....	384
Crude.....	979	Mushroom spawn.....	389, 392
Most-favored nation treaty clauses.....	1686, 1687	Mushrooms:	
Mother flowering bulbs.....	382-384	Dried, preserved in tins.....	369
Mother-of-pearl:		In tins.....	367, 1670
Cut in slabs.....	831	Prepared or preserved.....	367
Flakes or scales.....	874	Sliced and dried.....	368
Manufactures of.....	827	With beef.....	1044
Pieces.....	828	Music.....	938
Slabs.....	829	Books.....	944, 945, 946
Motifs:		Or sheets.....	669
Bead.....	778	German.....	947
Fur.....	733	Boxes.....	719, 722, 836
Motion—		Toy.....	837
For a new trial.....	1500	Manuscripts.....	1042
For return of a complete copy of evidence.....	1502	Rolls for self-playing instruments.....	835
To remand.....	1324	Musical—	
To strike.....	1323	Clocks.....	292
Motor and—		Instrument strings.....	818, 819
Engine.....	1053	Instruments.....	620, 834
Pump, hydraulic.....	1053	Musk:	
Boats.....	1554	Artificial.....	34, 35
Cycles.....	222, 1157, 1554	Grained or in pods.....	84, 85
Finished parts of.....	222	Muskets.....	247
Engines for vessels.....	1559	Turkish.....	248
Mounted—		Muslin—	
Animals and birds.....	731	Cloth, frilled.....	798
Stuffed chicks.....	734	Madras.....	481
Mountings, pathoscope.....	167	Sash curtain.....	798
Mourning crapes, silk.....	780	White, frilled.....	802
Mouthpieces, hard rubber.....	859	Mustard—	
Mousseline—		Dross.....	865, 866
And chiffon ribbons.....	620	French.....	438
Bands, silk.....	621	Ground.....	435
de Laines.....	1723		

	Page.		Page.
Mustard—Continued.		Neckties:	
In bottles.....	438	Cotton chief value.....	499
Oil of, synthetic.....	77	Silk.....	617
Seed.....	1107, 1110	Neckwear, lace.....	796
Oil of.....	71	Needle—	
Mutton, fresh.....	1043	Books.....	252, 253, 811, 1059
Myrobolan—		Cases.....	252, 253, 254, 1059
Extract.....	1138, 1139	Furnished.....	255
Fruit.....	1057	Unusual coverings.....	254
Myrtle, sticks of, in the rough.....	1174	Craft.....	1060
		Points for blanket frames.....	312
		Sharpeners, emery bags.....	723
		Threaders.....	308
		Wire.....	212, 213
		Needles:	
		Brosser overstitch machine.....	253, 254
		Crochet.....	252, 253
		Celluloid.....	254
		Darning.....	1059
		Electric.....	255
		Hand-sewing.....	1059
		Hypodermic, steel.....	312
		In ornamental cases.....	1444
		Jacquard.....	255
		Knitting.....	252, 253, 254
		Latch.....	252, 253
		Packed with vaccine virus, hand-sewing.....	1059
		Perineum.....	255
		Phonograph.....	838
		Sail, harness, and upholsterer's.....	1059
		Sewing-machine.....	252, 253, 255
		Shoe-machine.....	1059
		Steel larding.....	255
		Surgical.....	255
		Tape.....	252, 253
		With machines.....	254
		Negatives, photographic.....	173
		Neroli or orange flower oil.....	74
		Nets:	
		Artificial silk or cotton.....	785
		Beaded.....	798
		Fishing.....	533
		Gill, of flax, hemp, or ramie.....	532, 533
		Hamburg.....	803
		Human hair.....	749, 750
		Lace.....	774, 775, 776
		Leno, woven cotton.....	472
		Of whatever yarns, threads, or filaments composed.....	774
		Mosquito.....	803
		Nottingham, in the piece.....	783
		Shrimp, of flax.....	533
		Silk.....	795
		Tennis, of hemp.....	533
		Upholstery goods.....	503
		Nettings:	
		Cotton, made on Nottingham lace-curtain machine.....	480
		Embroidered, cotton.....	795
		Fish, cotton.....	526
		Flax gill.....	533
		Gauze or leno woven.....	472
		Jacquard figured.....	503, 781
		Lace.....	774, 775, 776
		Wire.....	218
		Neutraline, distilled oil.....	76
		Newspapers and periodicals.....	1059

N.

Nail—

Files.....	246, 247
Powder.....	82*
Rods, horseshoe.....	1058
Iron or steel.....	209, 210

Nails:

Cut, iron or steel.....	1058
For construction of vessels.....	1558
Galvanized date.....	228
Horseshoe.....	1058
Upholstering, brass.....	313
With leather heads, in chief value of leather.....	809
Wire.....	1058

Nail-head beads.....

687

Naphtha, solvent.....

49

Naphthalene.....

969

 In packages of $2\frac{1}{2}$ pounds or less.....

38

In wool.....

1187

Sulphonic acid.....

48, 50

Naphthionate of soda.....

48

Naphthol, coal-tar distillate.....

43

Soda.....

48

Sulpho acid.....

51

Naphthosulfoacids.....

49

Naphthylamin.....

49

Naphthylamine disulphonic acid.....

50

Naphthylaminsulfoacids.....

49

Napkins:

Initial or monogram, embroidered.....	799
Lace.....	773
Paper.....	680
Sanitary, cotton.....	521, 522

Narcissus bulbs.....

382

Nordica extract.....

82

Narrow woven strips of cotton as labels.....

541

Nasturtium or tropaeolum seed.....

1110

National Lincoln Sheep-Breeders' Association.....

901

Native—

South American wool.....	1182
Symrna wool.....	1182

Natural gas.....

1050, 1051

Nautical instruments.....

166

Neat cattle:

Importation of.....	1545
New Zealand.....	1546

Necklace clasps.....

756

Amber.....

820

Necklaces:

Amber.....	684, 688
Bead.....	683, 684, 757
Toy.....	714, 719

Necklets, imitation pearl strand.....

688

Neck ruffings.....

774, 776, 777

	Page.		Page.
New Zealand hemp	1005	Nori, seaweed	1055, 1056
Nickel—		Norway pine, sawed lumber	1173
Alloy—		Norwegian Veritas, bound volume of, not periodicals	1061
In narrow sheets	282	Nose glasses for microscopes	167
Wire	215, 217	Nosctur a soclis, rule of	1057
And iron platinum wire	215	Notebooks—	
Anode plates	282	And lead pencils	674
Bar buttons	273	Calendars	672
Bars	282	Note paper	661
Matte	1075	Notice of—	
Ore	1075	Abandonment of merchandise	1475
Oxide	282, 1042	Advance by appraiser	1302, 1344
Plates or sheets, covered with metal	197	Sent to wrong address	1280
Rods and sheets	283	Sufficiency	1344
Sulphate	282	Claim on condemned goods	1466
Nickel-covered iron or steel sheets	201	Decisions by the Board of General Appraisers	1397
Nickeled strips, zinc	308	Nottingham—	
Nickel-plated—		Bedspreads	523, 803
Handles, knives and forks with	244	Curtain net, taped and not taped	803
Steel	1093	Lace—	
Strips in coils	200	Lambrequins	782
Zinc	201	Window curtains	523, 524
Sheets	283	Nets and nettings	480, 774, 783
Nicol prisms, mineral substances	130	Pillow shams	523, 803
Nigari, not mineral water	465, 466	Tidies	803
Niger-seed oil	1007	Novelty—	
Night—		Braids	790
Lights	727	Siding	1166
Shells	724	Nut—	
Tapers	728	Blanks	223, 224
Nimgranine, a coal-tar preparation	48	Curtains, composed in chief value of beads made from nuts	689
Nippers	303	Locks, spiral	223
Nail or manicure	304	Oil	1066, 1068
Niter cake	1118	Nutgalls:	
Nitragin, a manure	1010	Extracts and decoctions of	58, 59
Nitrate—		Used for tanning, not advanced	1136
Of potash	1094	Nutmegs	435, 436
Salts or thorium oxide	281	Essential oil of	76
Nitrite of soda	102, 103, 104, 1118	Nuts:	
Nitric acid	883	All kinds, not specially provided for	422
Containing sulphuric acid	889	Almonds	420, 421
Nitronaphthalin	46	Apricots	420, 421
Nitrobenzole	49, 50, 51	Areca	423
Nitrourether	57	Bastard Brazil	424
Nitrosodioxynaphthalin	43	Betel	422
Nitrotoluol	49, 50	Bicycle	225
Noils:		Brazil	422
Cashmere goat hair	593	Caltrop	424
Chinese camel's hair	1193	Cocoa, in the shell	1062
Mohair	1192	Cola	424
Silk	601	Cream	422
Ramie	865	Filberts	422
Wool	1192, 1193	Ground olive	872
Nolsettines confectionery	348	Hazel	422
Nolle prosequi not plea in bar	1264, 1740	Iron or steel	223, 224
Nonenumerated articles	876, 886	Jatropha	425
Nonimportation	7, 1834	Kola	424
Broken demijohns	8	Langans as	425
Damage allowances, jurisdiction of board	1470	Lotus	391
Goods lost overboard	12	Lychee or lichi	425
Lemons	1472	No allowance for dirt in	424
Voluntary payment on	1407	Marrons	1062
Nonrefillable bottles	136	Palm-kernels	1062
Nonresident—			
Citizen, a	1153		
Consignee may make entry	1636		

Nuts—Continued.		Page.	Oilcloth—Continued.		Page.
Peach kernels.....		420, 421	Wrapping paper.....		645
Peanuts.....		422	Yellow.....		492
Pickles.....		375	Oilcloths.....		489
Pine cones as.....		424	Oiled and cotton-lined wrapping paper.....		667
Sapucaia.....		425	Oil-spreading machines.....		958
Sugar-coated, confectionery.....		348	Oils:		
Used expressly for dyeing or tanning.....		1136	Alizarin assistant.....		70
Walnuts.....		422	Almond—		
Water chestnuts, Chinese.....		424	Sweet.....	38, 70	
Which are drugs.....		422	Bitter.....	74	
Wood oil.....		424	Amber.....	74	
Nutto paste.....	346, 347		Ambergris.....	74	
Nux vomica.....	1063		Anilin.....	49	
O.			Animal, not specially provided for.....	67	
Oak—			Anise.....	74	
Bark, extracts of.....	1136		Seed.....	74	
Japanese white.....	317		Anthracene.....	969	
Logs.....	1167		Apricot-kernel.....	71	
Veneers.....	318		Aspic or spike lavender.....	74	
Oak-plank linoleum.....	539		Attar of roses.....	74	
Oakum.....	1063		Bean.....	70	
Oar blocks, wood.....	1164		Bergamot.....	74	
Oat—			Betulinum distilled from birch tar.....	1072	
By-products.....	360		Birch tar.....	1064, 1072	
Chaff.....	360		Distilled from wood.....	1067	
Feed.....	360		Cajeput.....	1064	
Hulls.....	360, 361		Camomile.....	74	
Screenings.....	360		Caraway.....	74	
Oatmeal.....	359		Cassia.....	74, 86	
Cocoa, Hansen's.....	431		Castor.....	38, 70, 1008	
Oats.....	359, 360		Cedrat.....	74	
German export bounty on.....	1534		Chinese nut.....	1064	
Rolled.....	559		Cinnamon.....	74	
Scorched or smoked.....	360		Citronella.....	74	
Without germinating quality.....	360		Civet.....	74	
Object glasses, immersion.....	166		Coconut.....	1064, 1067	
Objective lenses.....	168		Refined.....	432	
Objectives, photographic.....	168		Cod.....	1064, 1065, 1068	
Obscured plate glass.....	157		Cod-liver.....	1064	
Obscene articles, importation of, prohibited.....	1541		Combinations of.....	67, 70, 74	
Ocarinas, musical instruments.....	836		Containing alcohol.....	33	
Ocean freight not dutiable.....	1308		Cottonseed.....	72, 1064	
Ocher—			Creosote.....	969	
And ochery earths.....	90		In metal drums.....	1431	
Burnt.....	91		Croton.....	1064	
Octants, not optical instruments.....	166		Distilled and essential.....	74	
Octopus as shellfish.....	1113		Dressing, distilled from grease.....	1007	
Oculists' lenses.....	1088		Expressed.....	70	
Oculists' outfit as scientific and philosophical instruments.....	1091		Flaxseed.....	70	
Odoriferous substances, used in the manufacture of perfumes.....	84		Fish, not specially provided for.....	67	
Onanthic ether.....	76		Product of American fisheries.....	1064	
Oeser foils.....	267		Fusel.....	60	
Oil—			Haarlem, in small bottles.....	38	
And water colors in pans and tubes.....	98		Hempseed.....	70	
Cake.....	871-1063		Herring, Japanese.....	69	
Feed, Bibby's.....	1063		Ichtyol.....	1064	
Meal.....	1063		Jasmine.....	74, 86	
Soya bean.....	1063		Juglandium.....	1064	
Cans, bicycle.....	222		Kerosene.....	1064	
Paintings.....	847		Lavender.....	74	
Oilcloth:			Lemon.....	74	
Enameled.....	491		Lemon-grass.....	74	
For floor.....	537		Light, crude, distilled.....	49	
Foundations.....	1217		Lime.....	74	
Jute.....	558		Linseed.....	70	
			Lubricating.....	869	
			Mace.....	74	

Oils—Continued.	Page.	Olives—Continued.	Page.
Mirbane.....	50, 51	In jars.....	416
Mixtures and combinations of.....	72	In olive oil.....	415
Mowrah.....	1068	In packages less than 5 gallons.....	414, 415
Mustard-seed.....	71	In small kegs.....	416
Niger-seed.....	1007	Measurement of.....	417
Neroli, or orange-flower.....	74	Pitted and stuffed.....	415
Nut.....	1064, 1068	Ripe, in brine.....	415, 416
Of American fisheries.....	1064	Stuffed.....	417
Of bay leaves, essential.....	1217	Olive wood—	
Of cognac.....	1217	Crosses and missal stands, regalia.....	1124
Of roses, artificial.....	76	Pieces of, not parts of, bibles.....	980
Of rum, or essence of.....	1217	Olives or scientific emeralds.....	770
Olive.....	70, 1064	Onions.....	380, 381
Denaturing.....	1065	Bushel weight of.....	381
Fit for salad purposes.....	71, 74	In brine.....	373, 374
For manufacturing or mechanical purposes.....	1068	Rotten.....	1468
In tin or bottles.....	71, 72	Onionskin, imitation onionskin and manifold papers.....	646, 661, 662, 663
Quantity, determination of.....	73, 74	Onyx.....	174, 175
Rendered unfit for food.....	1064, 1072	Articles of.....	179, 180
Orange.....	74	Candlebras.....	180
Origanum.....	74	Clock cases.....	180, 292
Orris.....	76, 86	Columns.....	180
Palm.....	1064	Imitation of.....	768
Palm-kernel.....	1007, 1064	Manufactured.....	177, 178
Peach-kernel.....	71	Mexican.....	176, 177
Paraffin.....	1064	Mosaic cubes of.....	174, 175
Peanut.....	70	Paving tiles.....	174, 175
Peppermint.....	74	Slabs.....	174, 175
Perilla.....	1064	Vases.....	180
Petroleum.....	1064	Opal—	
Poppy-seed.....	70	Balls, drilled.....	772
Produced from oilseeds, German bounty on.....	1534	Buttons.....	706
Proprietary preparations of.....	34	Glassware.....	141
Rapeseed.....	70	Opals, rough, cut to observe quality.....	769
And petroleum combined.....	72	Openers, cork.....	312
Recovered.....	1008	Opera glasses.....	165, 166, 167
Rendered.....	67	Opium:	
Rosemary or anthross.....	74	Alkaloids or salts of.....	77
Seal.....	67	Aqueous extracts of.....	77, 80
Sesame or sesamum seed or bean.....	70	Containing less than 9 per cent morphia.....	77
Sperm.....	67	Crude—	
Spermaceti, product of American fisheries.....	1064	Not over 9 per cent morphia.....	77
Sod.....	67, 68	Over 9 per cent morphia.....	77, 81
Sweet almond and castor in packages of 2½ pounds or less.....	38	Deposited in bonded warehouses.....	77
Tea-seed.....	71	Derivatives of.....	77
Used for soapmaking or dressing leather.....	1006	Dried.....	77, 80, 81
Valerian.....	74	Importation of, by Chinese persons, prohibited.....	80
Whale.....	67	Importation of, for other than medicinal purposes, prohibited.....	78
Product of American fisheries.....	1064	Not on manifest.....	1643
Ointments, proprietary.....	34	Powdered.....	81
Okra, dried.....	396	Or advanced.....	77
Old—		Prepared for smoking purposes.....	77, 78
Baggings.....	1076	Smoking, forfeiture of.....	80
Cotton, tie buckles.....	1016	Temporarily unladen.....	1642
Glass.....	168	Tinctures of.....	77
Oleic acid.....	76, 1008	Unlawful importation of.....	80
Oleomargarine.....	1693	Optical.....	1091
Oleo fegate merluzzo ferruginoso.....	22	Optical—	
Olein wool.....	69	Glass.....	153
Oleo stearin.....	1073	Instruments, frames, etc., for.....	165, 166, 167
Olives.....	414	Orange—	
Broken pitted.....	415	Bitters, British compounded spirits, countervailing duty.....	1533
In brine.....	415	Boxes.....	320, 321, 322
		Tied together.....	418

Orange—Continued.	Page.	Ornaments—Continued.	Page.
Flower—		Composed in chief value of metal-coated paper.....	648
Oil.....	74	Composed of yarns, threads, or filaments.....	774
Water.....	83, 867	Hair.....	752
Water, medicinal preparation.....	84	Hat.....	698
Mineral.....	91, 314	Household effects.....	951
Oil.....	74	In the piece.....	796
Peel.....	1073, 1074	Metal thread.....	782, 783
Preserved, candied, or preserved.....	419	Military.....	752
Sun dried.....	419	Millinery.....	733, 752, 764
Trees, seedlings.....	999	steel stampings for.....	205
Orange-wood sticks.....	867	Porcelain.....	127
Oranges—		Slides and buckles for slippers.....	765
Halved in brine.....	998	Spar.....	178
In packages.....	418	Stoneware.....	119, 120
Orchid plants, or cattleyas.....	384	When jewelry.....	766
Orchids.....	382	Orpiment.....	907
Orchil or orchil liquid.....	1074	Origanum oil, red or white.....	74
Ores:		Orris:	
Antimony and stibnite.....	896	Oil of.....	76, 86
Cerium.....	961	Root—	
Chromic.....	964	Drug, advanced.....	56, 57
Copper.....	974	Crude.....	981, 982
Containing zinc.....	294	Orthotoluidin.....	51
Emery.....	987	Osier:	
Iron.....	1021	For baskets.....	323
Gold.....	1075	Or willow baskets.....	330
Hematite.....	1024	Ostensorium, regalia.....	1122, 1128
Lead-bearing—		Osmium.....	1021
Entry of.....	286	Ostrich feathers, crude.....	737
Remaining in bonded smelter when law changes.....	1592	Outage of wine in casks.....	454
Manganese.....	1041	Outfit—	
Nickel.....	1075	And equipment for vessels.....	1559
Refining and smelting of, in bond.....	1570, 1573	For shooting gallery.....	1100
Silver.....	1075	Of tools for an automobile, leather cases.....	809
Sulphur, as pyrites.....	1131	Owls, mechanical.....	737
Tin.....	1147	Owner:	
Tungsten-bearing.....	1148	Consignee, falsely declared as.....	1260
Vandium.....	1050	Right of Government to proceed against.....	1260
Zinc-bearing.....	293, 294	Owner's declaration on entry.....	1253
Additional duty on.....	1268	Ownership:	
Oriental—		Bill of lading evidence of.....	1229
Frames of paintings.....	335	Of consigned goods.....	1235, 1236
Rugs.....	587-588	Ownership:	
Stripes.....	485	Proof of.....	1260
Organ keyboard case.....	835	Smuggled goods.....	1747
Organzine—		Oysters in oil.....	1114
Sewing silk.....	605	Oxford caps.....	1122, 1125
Silks, damaged.....	606	Oxide, Collin's.....	96
Warp ends or thrums.....	606	Oxide of—	
Ornamental—		Antimony.....	265
Feathers.....	737	Tin or cassiterite.....	1146
Grasses.....	734	Chromium.....	89
Grains, grass piquets.....	376	Iron.....	95, 886
Hinges for church doors.....	1204	Colcothar.....	90
Iron work.....	189	Zinc.....	93
Leaves.....	733, 737	Chinese white.....	98
Pins.....	766	Powder.....	94
Rivets.....	259	Ox shoes.....	1058
Ornamented glassware.....	142		
Ornaments:			
Alabaster.....	178		
And trimmings of beads and nettles.....	685		
Artificial flower.....	740		
Beaded.....	778		
China.....	122, 123		
Christmas tree.....	713, 717		

P.

Packages—	
And containers of metal.....	1210
Brandy, what constitutes.....	452
Chemicals and medicines in not over 2½ pound.....	37
Fish in less than half barrel.....	992

Packages—Continued.		Paintings—Continued.	
Of wines and liquors defined.....	451	On tiles.....	853
Size of.....	268	Framed.....	110
Two boxes tied together.....	418	Porcelain panels.....	127
Packed—		Reciprocity on.....	1510
Package entries.....	1459	Reciprocity with France.....	847
Price on net weight.....	1335	Straw matting.....	823
Packing—		Water color.....	1194
Cases, value of in determining rate.....	482	Water-silk screens.....	628
Metal.....	308	Paints:	
Of cigars.....	356	Artists'—	
Packing-box shooks.....	320	Not specially provided for.....	94
Packing boxes:		Water-color, in boxes with brushes.....	98, 99
Containing empty gin bottles.....	320	Dry, lime-proof greens.....	116
Empty.....	320	Enamel, not specially provided for.....	94
Packing charges—		Needle, for blanket frames.....	312
Appraiser's action on.....	1272	Not specially provided for.....	94
Are part of dutiable value.....	1437	Theatrical grease.....	97
Value of.....	1269	Water-color.....	712
Padding:		In boxes.....	97
Canvas.....	1214	Palings, wood.....	1164
Jute.....	553, 555, 556, 557, 1214	Palette knives.....	243, 244
Pads:		Palladium.....	1021
Factus truss.....	871	Palm—	
Felt, of cattle hair, tarred.....	867	Bast.....	335
Rubber recoil.....	825	Fiber cloth.....	826
Shaving paper.....	681	Leaf—	
Paint—		Baskets.....	822
Boxes, childrens.....	95, 710	Braid.....	693
Charton white, composed of sulphate of barium.....	98	Fans.....	988
Dryer, crown patent as.....	98	Manufactures of.....	821
Enamel veluvine, white.....	96	Nuts.....	1062
White, containing zinc.....	98	Oil.....	1064
White enamel.....	96	Tree hearts.....	371
Painted—		Palm-kernel oil.....	1007, 1064
Calendar.....	846	Palm leaves:	
Ceiling.....	846	Bleached and dried.....	734
Cotton screens.....	843	Painted.....	739
Glass windows.....	168	Prepared.....	737
Lithographs.....	847	Palms.....	382
Photographs.....	674	Palmyra fiber.....	558, 559
Plaques, china.....	126	Pamphlets.....	669, 945
Silk banner.....	845	Panama straw hats.....	696
Window glass.....	168, 1199	Pandanus seeds.....	1062
Painters' knives.....	243, 244	Panderma wool.....	1189
Painting:		Panels, porcelain, painted.....	127
Ikon, regalia.....	1124	Panforte, confectionery.....	364
On porcelain.....	852	Panne velvet.....	608
Paintings:		Pans, evaporating, stoneware in part.....	118
And frames, dutiable value.....	1304	Pantograph.....	1088
Frames for.....	847, 852	Machines.....	302
Gelatin cards, dutiable.....	852	Pants, cotton, knitted.....	509, 510
Includes frames.....	1280	Papain.....	34, 57
In mineral colors.....	126, 1517	Papaw—	
In oil.....	847	Melon juice in powder form.....	981, 984
Original.....	839, 1511, 1517	Milk.....	56, 983
Of American artists residing abroad.....	1205, 1206	Papaya carica powder.....	57
On china.....	126	Paper:	
On copper plates for use in church.....	1205	Absorbent.....	682
On glass in frames composed of glass, metal, paper.....	1204, 1205	Adhesive, with metal appliance.....	677, 679
On ivory.....	852	Albuminized or sensitized.....	644
On Japanese paper screens.....	851	And metal calendar rolls.....	880
On photograph holders.....	1205	Articles made of.....	639, 640
On pile fabrics.....	847	Artificial flowers.....	642
On porcelain.....	126, 853	Bags.....	643, 647
		Containing pen, penholder, and pencil.....	714
		Printed.....	681

Paper—Continued.	Page.	Paper—Continued.	Page.
Baryta-coated.....	643, 645	Fireboard.....	664
Bibulous.....	639, 641, 642	Foil, tin foil, or silver foil paper.....	651
Blotting.....	640	Folders.....	1059
Blue-print.....	638, 646	For cross-section books.....	663
Board.....	665	For manufacture of paper hangings.....	682
Body.....	678	For photographic purposes.....	645
Bond.....	661	Forms.....	648, 679
Book of litmus.....	640	Gold borders.....	644
Book printing.....	638	Grease-proof.....	643, 650
Borders.....	649	Gummed.....	643, 646, 650, 651
Box-board.....	635	Halloween novelties.....	711
Box tops.....	649	Handmade.....	661
Lithographed.....	656, 657, 659	Copying.....	662
Stamped into designs or shapes.....	679	India transfer paper.....	663
Boxes.....	652	Printing.....	662
For hosiery and gloves.....	1454	Surface-coated.....	662
Glass tops, containing powder puffs.....	1431	Hangings.....	652, 666, 668
Plain for hatpins, knife, and comb.....	651	Composed wholly or in chief value	
Razor.....	643	of paper.....	664
Silk lined.....	644	Hand-painted.....	667
Surface-coated, embossed.....	647	Lincrusta.....	669
Calendar plate finished.....	643	Material for.....	666
Carbon.....	680	Hats, varnished.....	680
Cellulose Watte or Watoline.....	640	"Hygeia," used for wrapping straws and	
Chinese lanterns.....	642	toothpicks.....	858
Chrome.....	652	Imitation—	
Cigarette.....	856, 860	Japan.....	661
Cloth-lined.....	643	Parchment.....	643, 644, 646, 650
Coated.....	645	Imperfect.....	678
Colored and embossed.....	652	India.....	680
Printed matter.....	648	Initial letters of.....	650
Common box-board.....	635	Initials, metal-coated.....	677
"Congo tracing" or "Parchment Congo".....	647	Japan.....	661
Colored.....	639	Japanese—	
Copying.....	639, 641	Handmade.....	663
Cover.....	638	Thin.....	641
Covered with gelatin or flock.....	643	Kraft.....	638, 665
Covered with metal leaf.....	643	Labels.....	646
Crackers or bonbons.....	711	Lace.....	680
Crêpe.....	639	Lamp shades.....	642
Flags.....	641	Leaves.....	734
Tissue.....	642	Ledger.....	661
Crimped.....	642	Letter.....	661
Crochet patterns.....	644	copying book.....	639
Cut bowl.....	678	Lithographic transfer.....	643, 650
Cut or shaped for boxes.....	666	Litmus.....	640, 1041
Cutters.....	884	Machine, handmade.....	661
Decalcomania.....	646	Made from wood pulp.....	651
Decorated, surface-coated.....	646	Made to imitate stained window glass.....	652
Die cut, or stamped into designs or shapes.....	676	"Manifold".....	646
Dolies.....	680	Maps or charts.....	673
Duplex.....	1078	Manufacture of.....	644, 669
Drawing.....	661	Marbled.....	643, 650
Embossed.....	661	Masks, in part of wool.....	832
And printed by the engraving process.....	662, 679	Measuring tapes.....	672
With a stamped design.....	646	Mesh.....	652
Emery.....	723	Metal-coated.....	647
Ends, binding material.....	679, 680	Mills, lava stones for.....	182
Engraved.....	661	Money, Chinese.....	649
Envelope, cotton-lined, cotton chief value.....	651	Napkins.....	680
Envelopes.....	663, 664	"Normandy vellum".....	638
Fans, surface-coated.....	749	Note.....	661
Filtering.....	639, 1088	Old.....	1075
Dishes.....	641, 642	Onionskin.....	661
Or blotting.....	682	And grease-proof.....	646
		Imitation.....	662

Paper—Continued.	Page.	Paper—Continued.	Page.
Ornaments, embossed.....	648	Weights.....	221, 884
Parchment.....	643, 644, 645	Glass.....	144
Cloth.....	649, 650	Photographic views attached.....	149
Perforated.....	650	Soapstone.....	131
Pencil.....	853	White.....	639
Perlimuttes.....	645	Surface-coated, flint-glazed.....	645
Photographic.....	650	Window.....	649
Pieces of.....	680	Windowpania.....	649
Plate.....	638	Writing.....	639, 661
Plain basic for sensitizing.....	643	Ruled and decorated.....	663
Plain white.....	666	Wrapping.....	640, 1210
Pottery.....	639	Waterproof.....	645
Press.....	664	With a surface design.....	645
Print, countervailing duty.....	636, 637	Wrappings or containers.....	1211
Printed tissue.....	642	Papier-mâché—	
Printing.....	639, 1077, 1078	Boxes, coverings of ad valorem goods....	1429
Unsize.....	639	Gaiter buttons.....	707
Profile.....	662	Manufactures of.....	827
Rag pulp not.....	1180	Panels.....	852
Record.....	661	Substances known as.....	831
Röntgen-ray.....	648	Paprika—	
Ruled—		As red pepper.....	437
Jacquard designs.....	665	Pods, dried.....	437
Music.....	682	Paquets, made of artificial flowers.....	737
Sand.....	648	Parabolic mirrors.....	160
Saturating.....	635	Paraffin.....	1064, 1066
Screens.....	664	Candles.....	719, 821
Japanese, painted.....	851	Countervailing duty.....	1071
Mounted.....	649	Is wax.....	820
Script letters and words.....	645	Liquid—	
Sensitized.....	643	And paraffin molle.....	1071
Shaving pads.....	681	And soft.....	1072
Sheathing.....	635	From Russia.....	1071
Silver.....	640	Soft.....	1072
Stereotype.....	639	Made from petroleum.....	1071
Stock.....	865, 1075	Parafinum Liq. Ph. G.....	1072
Strawboard.....	635	Paraldehyde.....	21
Strips.....	648	Paramidophenol.....	47
Embossed, metal-coated.....	644	Paramidophenol salzaures.....	48
Sulphite, thin.....	647	Paranitranilin.....	49, 51
Supercalendered and embossed, grease-proof.....	648	Paranitrophenol.....	48
Surface-coated.....	643, 645, 1078	Paraphenylene diamine.....	47
Labels of.....	645	Parasol ribs or stretchers.....	261
Embossed and printed.....	1366	Parasols.....	715, 861
Surface decorated.....	643, 648	Cotton-covered.....	715
Tablet.....	661	Dolls'.....	721
Tea.....	641	Embroidered or appliqué.....	785, 796
Tissue.....	639	Parcel post—	
For manufacturing.....	642	Importations, additional duty on.....	1283
What is.....	640	Importations by.....	1365, 1712
Wrapping.....	640	Packages—	
Toys.....	714	And unsealed packages in the Postal—	
Tracing, treated with oil.....	679	Union mails.....	1713
Transfer, wet.....	257, 258	Disposition of abandoned.....	1711
Twine.....	1187	Parchment.....	1079
Typewriter.....	644, 661	Cloth.....	649
Umbrellas.....	682	Legal forms.....	1079
Uncoated.....	645	Paper.....	651
Vegetable—		Perforated.....	650
Parchment, with cotton-mesh back.....	649	With cotton back, paper the chief value.....	650
Tracing.....	681	Slates.....	675
Wall.....	649	Spinning paper.....	648
Wall decorations.....	852	Parian—	
Wall pockets.....	656	Wares.....	122, 123
Waste, photographic.....	865	Works in.....	1197
Waterproof crepe.....	642		

	Page.		Page.
Paris—		Paving—	
Green.....	1079	Blocks, wood, creosoted.....	332
White.....	93	Posts.....	319
Parma A.....	44	Stones, granite.....	183
Parsley seeds.....	391, 393, 984	Tiles—	
Parsnip seed.....	389	Marble.....	174, 175, 177
Partner as consignee.....	899	Onyx.....	174, 175
Partners, liability of.....	1700	Payment of—	
Partnership, purchased goods test of.....	1253	Amount of judgment by Treasury De-	
Parts of—		partment.....	1707
Buttons.....	702, 706, 707	Duties.....	1364
Machinery.....	302	Before protest.....	1392, 1398, 1407
Marine mine.....	1053	Delayed.....	1367
Musical instruments.....	835, 836	In gold and silver coin.....	1699
Printing machines—"doctors".....	301	To Confederacy.....	1656, 1699
Steam turbine.....	1054	Liquidated, not necessary to protest.....	1402
Toys.....	720	To obtain possession of goods.....	1707
"Parts thereof," construction of term in par-		Wrecked goods.....	1564
agraph 108.....	163	Pea:	
Passementeries, beaded trimmings.....	691	Flour.....	368
Passengers' baggage.....	1154, 1611	Hulls.....	1056
Articles on the person.....	1611	Sausage.....	869
Illegal importation, declaration.....	1606, 1611	Peach kernels.....	420, 421
Passengers' exemption, Panama Canal.....	1152	Peach-kernel oil.....	71
Passenger's trunk containing dutiable wear-		Peaches, green or ripe.....	404, 405
ing apparel.....	1440	Peacock—	
Passometers.....	1089	Feathers.....	738
Pasta Mack.....	83	Quills, crude.....	737
Paste:		Peacocks.....	931
Articles of, cut.....	171	Peanut oil.....	70
Bloater.....	378	Combined with sesame oil.....	73
Buttons.....	707	Peanuts or ground beans.....	422
Containing alcohol.....	34	Rotten, nonimportation.....	1471
Compositions of, not set.....	169	Pear stocks, cuttings, or seedlings.....	386
Definition of term.....	172	Pears:	
Manufactures of, not specially provided		Alligator, or avocado.....	998
for.....	168, 707	Green or ripe.....	404, 405
Mulligatawny, curry.....	376	Prickly.....	999
Nutto.....	346, 347	Pear-wood boards.....	319
Sandwich.....	867	Pearl—	
Shrimp.....	378	And metal buckles.....	275
Tomato.....	372, 373	Ash.....	103
Pastes, proprietary.....	34	Beads, imitation of.....	756
Pasteboard.....	681	Button blanks.....	707, 708
Wrappings.....	1210	Buttons.....	702
Pastel boards for drawing paper.....	663	Draughts (checkers).....	710
Pastels.....	839, 1194	Hardening, specially provided for.....	112, 113
Pastilles, violet, confectionery.....	347	Artificial sulphate of lime.....	87
Pastry, chocolate, confectionery.....	364	Mother-of.....	1079
Patches for covering cotton.....	928	Opera glasses.....	1090
Pate de fole gras.....	428	Scales.....	829
Pate de reglisse, confectionery.....	348	Shells.....	1079
Patent—		Shoe buttons.....	704
Barley.....	359	Pearl-handled daggers.....	242
Fuel.....	968	Pearled barley.....	359
Pathescope frames and mountings.....	167	Pearls—	
Pathescopes.....	167	And parts of.....	766
Patinol—		Artificial or so-called synthetic or recon-	
Elastic.....	95	structed.....	766
Matt.....	95	Imitation of.....	769, 771, 773
Patna, or Bengal rice.....	362	Matched to color and size, drilled.....	772
Pattern—		Product of American fisheries.....	1071
Books.....	675	Split.....	773
Rolls, steel.....	258	Pea flour.....	368
Patterns:		Peas:	
Dress.....	1054	Black and white eyed marrofat.....	382
Lithographed on cotton cloth.....	660	Bounty on, German.....	1534
Molders.....	1053, 1054	Green or dried, in bulk or barrel.....	381

Peas—Continued.	Page.	Pepper—Continued.	Page.
In bags.....	1439	Shells—	
In tins.....	367, 368, 1670	Pulverized.....	437
Prepared or preserved.....	367	Unground.....	438
Split.....	381	Seed.....	389, 393
When seed.....	382	Peppers in brine, pickles.....	376, 377
Peat moss.....	853	Spanish, red.....	371
Pebble lenses.....	163, 164	Peppermint oil.....	74
Pedestals—		Peptone.....	23
And baptismal fonts, terra-cotta.....	1126	Perborate of sodium.....	954
Marble.....	841, 844, 845	Percussion caps.....	728
Pedicure instruments.....	139	Perfume flasks.....	754
Pedigree, registration of grandparents.....	930	Perfumery:	
Pedometers.....	306, 755, 1089	Alcoholic, cologne.....	81, 82
Peel, orange and lemon in brine.....	1073, 1074	Exportation of, for drawback.....	1574
Peking melange, wool dress goods.....	576	Manufactured from domestic spirits for export.....	1569
Pelargonic ether.....	76	Phosphoric acid.....	888
Pelegaronate of ethyl.....	76	Phosphor tin.....	1147
Pelissier padding.....	1214	Phosphorus pentoxide.....	889
Peltries, effects of Indians.....	1216	Photo-engraved plates.....	257, 258
Penalties—		Photo—	
For undervaluation.....	1297	Baths, glass.....	144
Repeal of statute does not release.....	1733	Frames, lithographed.....	656
Pencil—		Photogelatin printing press.....	303
Leads not in wood.....	854	Photographic—	
Sharpeners.....	302	Album.....	676
Pencils:		Moving-picture films.....	1091
Crayon.....	854	Perilla.....	1064
Fancy metal.....	757	Periodicals.....	1060, 1061
Indellible.....	1636	Perineum needles.....	255
Lead.....	853	Perishable goods.....	1656
Paper or wood.....	853	Perimeter paper.....	645
Slate.....	184, 853, 854	Permissive statutes.....	1615
Soap.....	854	Permit of delivery:	
Wood, with metal holders.....	879	Landing without.....	1640, 1645
Pendants, glass, for chandeliers.....	148	Must be in writing.....	1642
Penelope, cotton cloth.....	487	Sea stores, landing without.....	1660
Pen and ink—		Withdrawal from warehouse.....	1457
Drawings.....	839	Persian—	
Sketches.....	852	And Astrakan lambskins.....	746
Penholder—		Berries, extracts and decoction of.....	58
Handles.....	884	Berry extract.....	59
Tips.....	284	Flannels.....	574
Penholders, parts of.....	284	Treaty.....	1738
Penknives.....	236, 237	Person—corporation.....	1695
Inclusion of value of coverings in dutiable value.....	241	Personal effects.....	1080, 1151, 1153, 1154, 1156, 1157
Pen point and barrel in one piece.....	283	Imported by mail.....	1155
Pen whistles, scout whistles.....	715	Includes all chattels.....	1080
Pennyroyal oil.....	74	Unaccompanied by owner.....	1158
Pens—		Wearing apparel.....	1159
And penholders.....	282, 284	Peruvian bark.....	888
Drawing.....	312	Appraisal of.....	1307
Feather.....	732	Petit grain, oil of.....	77
Glass.....	144	Petition—	
Metallic.....	283	For rehearing and time limitations on appeals.....	1324
Peoria moutan, Peoria arborea.....	387	For review of General Appraisers.....	1326
Peony, herbaceous.....	382	In action for recovery of duties.....	1707, 1708
Peperoni pickles.....	376	Petroleum:	
Pepsin—		Crude, from Peru.....	1072
Bitters, Arp's.....	444	Products.....	1069, 1457, 1535
Tablets, confections.....	347	Refined.....	1066
Vegetable.....	57	Residuum.....	1073
Pepper:		Tar.....	1071
Black or white.....	435, 436	Pewter—	
Cayenne.....	435	And Britannia metal, old.....	1081
Red.....	435, 437	Old.....	1081
Ground with oil.....	438	Whistles of.....	721

	Page.		Page.
Pharlaris arundinacea.....	1109	Pickets, wood.....	1164, 1170
Pheasants, frozen.....	428	Pickle dish blanks.....	173
Phenacetin.....	36	Pickled—	
Phenol.....	969	Capers.....	375, 377
Phenolphthalein.....	39	Nuts.....	375
Phenylacetylat.....	34	Or salted sheepskins.....	1117
Phenylethyldiamine.....	48	Vineyard leaves.....	374
Philippine—		Walnuts.....	377
Cigars, direct shipment.....	1530	Pickles.....	375
Islands not foreign territory after April		And sauces.....	378
11, 1899.....	1532	Chowchow.....	407
Products imported from another country.....	1532	Picks, steel.....	223
Philosophical and scientific apparatus and		Picot or loop thread.....	526
instruments..... 1081, 1086, 1090, 1195, 1196,	1218	Pictorial paintings on glass.....	1199, 1201
For a private academy.....	1088	Pictureframes.....	1054, 1195
Lenses not.....	165	Free entry of.....	1199
Magic lanterns, slides.....	1089	Pictures—	
Phonograph—		And paintings for exhibition.....	1197
Master records.....	1314	Church.....	1124
Needles.....	838	Marble mosaic.....	1204
Records.....	838	Composed wholly or in chief value of	
Phonographs.....	838, 839	paper.....	652
Phosphate of soda, specifically provided for.....	102	Folding.....	659, 660
Phosphates, crude.....	1091	Glass mosaic.....	1122
Photograph covers.....	664	Inlaid wood.....	843
On glass.....	173	Mosaic, marble.....	180
Painted.....	674	In frames composed of glass beads.....	687
Photographic—		Photographic.....	1195, 1196
Cameras.....	854	Rice-paper, hand-painted Japanese.....	847
Color-process screens.....	149	With descriptive text.....	947
Dry plates.....	854, 856, 908	Piece goods printed with designs.....	625
Film scrap.....	864	Pig and bar lead.....	279
Films.....	908, 1197	Pig-bristle pompoms and aigrets.....	734
Lantern slides for museum.....	1088	Pigeons:	
Lenses.....	167, 168	Homing.....	428
Frames, etc., for.....	167	Wild, dead.....	426
Negatives.....	173	Pigments:	
Objectives.....	168	Artists, not specifically provided for.....	94
Paper.....	638, 643, 650	Black of bone or vegetable substances.....	89
Waste.....	865	Containing lead.....	91
Pictures.....	1090	Containing zinc.....	93
Plates.....	923	Gray blue.....	97
Views, colored, and covered with glass.....	149	Green earth.....	116
Stereoscopic, on glass.....	172	Lime-proof greens.....	116
Photographs.....	669, 938, 950, 1159, 1197	Not specially provided for.....	94
And engravings.....	1089	Powdered, or levigated iron ore.....	97
Photogravure plates.....	257, 258	Pigskin saddles.....	1034
Photomechanic reproductions of paintings,		Pigskins.....	1036
unbound.....	944	Rough tanned.....	1034
Photometers.....	1089	Pilchards.....	993
Phthalic acid.....	888	Pile—	
Anhydride.....	889	Fabrics.....	522, 523, 563
Phylactery.....	1042	Angora goat hair.....	598
Physicians'—		Articles made of.....	545
And surgeons' implements.....	1088	Cotton.....	499
Mirrors.....	173	Cotton velvet cords.....	501
New microscope as tools of trade.....	1100	Flax, hemp, or ramie.....	545
Piano—		Jacquard figured.....	501
Case, painted.....	852	Moquet or velvet.....	570
Covers, cotton and metal.....	528	Prayer rugs of.....	500
Wire.....	212, 213	Silk.....	606
Pianoforte—		Slipper patterns of.....	501
Action.....	834	Terry cloth as.....	500
Hammers.....	836	Wool powder puffs.....	566
Leather.....	804	Protectors, iron.....	308
Piassava fiber.....	558, 559	Piling, spruce.....	1171
Piccolos.....	836	Pilocarpine, Murate.....	24

Pill—	Page.	Pin or hairpin boxes.....	Page.
Boxes, willow.....	325	Pins:	
Tiles—		Brass and tin.....	757
China.....	122	Crank.....	203, 204
Stoneware.....	119	Glass headed.....	173
Pills, proprietary.....	34	Hat, iron or steel shafts for.....	216
Pillow—		Jewelry.....	752
Cases—		Lace, hat, and bonnet.....	761, 765
Cotton.....	520	With glass heads.....	286, 287
Drawnwork hem.....	521	With metal shanks.....	287
Embroidered, as regalia.....	1123	With ornamental heads.....	766
Initial or monogram embroidered.....	799	With solid heads.....	285
Shams—		Wrist.....	203, 204
Lace.....	775	Pistols.....	248, 249
Nottingham lace.....	803	Automatic.....	249
Made on Nottingham machine.....	523	Borchardt's automatic repeating.....	247
Slips.....	526	Horse.....	243
Tubing, flax.....	551	Miniature.....	311
Pillows, feather.....	735	Obsolete.....	243
Pimento.....	435, 436, 437	Piston rods.....	194, 195, 203, 204
Pimentos in tins.....	373	Pit saws.....	260
Pinafores, toy.....	715	Pitch:	
Pincers.....	242, 304	Brewer's.....	55
Pincushions.....	738	Of coal tar.....	969
Imitation fruit.....	731	Pipes.....	834
Resembling doll carriages.....	719	Resin.....	872
Pineapple juice, carbonated.....	462	Pitchers, stamped from steel sheets.....	206
Pineapples—		Pituitary glands.....	867, 934
In barrels or other packages.....	420	Pixie plants.....	716
In bulk.....	420	Placards:	
Fruit and juice mixed.....	408	Cardboard, plain or coated.....	679
In tins.....	414	Chief value of paper.....	652
Invoiced at average price.....	1605	Lithographed.....	656
Measurement of crates.....	420	Place of filing protest, warehouse and trans-	
Preserved.....	404, 405, 415	portation entries.....	1370
Preserved in sugar.....	408	Plaids.....	1127
Pine—		Plaits:	
Clapboards.....	1165	Chief value of straw.....	693
Cones—		Leghorn.....	694
As vegetable substances.....	425	Manila hemp.....	694
Nuts.....	424	Planed:	
Logs.....	1165	Boards.....	332
Lumber, planed on edge.....	1169	Elm.....	1173
Seedlings.....	388	Lumber.....	1169
Strips.....	1173	Planks:	
Ping-pong balls.....	53	Circassian walnut.....	316
Ping pin, drug, advanced.....	56	Wood.....	1164
Pipe—		Plano-convex lenses.....	164
Bowls.....	332, 858	Unmounted.....	1091
Clay.....	856, 857	Plano glasses.....	163
Unfinished.....	859	Plant—	
Cases.....	859, 1445	Bulbs.....	386
Cast-iron.....	226, 227	Quarantine act.....	1693
Clay.....	116	Planters' agricultural implements.....	890
Gauges.....	1053	Plants:	
Pipes.....	856	Decorative and greenhouse.....	383
Clay, glazed.....	857	For botanical garden.....	1119
Common clay.....	859	For forcing.....	1057
Common tobacco.....	856	Herbaceous—funkia.....	383
Copper.....	268, 269, 270	Imported by the Department of Agricul-	
Flexible.....	270	ture.....	1091
Defective.....	232	Pixie.....	716
French clay.....	859	Plaques:	
Imitation meerschaum.....	857	Bisque and china.....	122, 123
Iron or steel.....	231, 232, 234	China, painted.....	126
Known as "church wardens".....	859	Earthenware.....	1124
Meerschaum.....	856	Stoneware.....	119, 120
Pipestems—		Plasmon.....	1027
And pipe bowls, separately packed.....	858		
Clay, broken.....	133		

	Page.		Page.
Plaster:		Plates—Continued.	
Cast of room	1052	Iron and steel—Continued.	
Of Paris	112	Galvanized	197, 198, 199
Figures, gilded	310	Manufactures of, not specifically pro-	
Furniture designs	1054	vided for	219
Manufactures of	827	Metal, enameled or glazed	250
Vases and statuettes	829	Linings and crosses, fur	744
Models	829	Lithographic	257, 258
Rock	112, 113	Looking-glass	159, 160
Plasters:		Beveled	161
Albespeyres	87	Corrugated	160
Belladonna, capsicum, etc.	86	Mill, universal	205
Corn	86	Molds or dies	1425
Healing or curative	86	Nickel, covered with metal	197
'Plasticine' and "plastiline" ..	869	Photo-engraved	257, 258
Plastrons and zachens trimmings ..	799	Photogravure	257, 258
Plateaux, mirror	160	Saw	189, 190, 191, 192
Plateaux:		Circular	190, 191, 192
Braids or plaits of straw	697	Scale, earthenware	121
Composed of straw	694	Sign, glass	144
For hats	697	Surface-coated paper	666
Or plaques made of chip	696	Steel	204
Plate—		Bessemer, etc., processes	202
Glass—		Circular	192
Cast, polished	157, 158	Engraved, for manufacture of plate	
Etched or enameled	157	glass	258
Ground and polished	158	Engraved for printing	257, 258
Ground to cylindrical or prismatic		Engraved, for printing bonds and	
form	164	securities	1128
Obscured	157	Floor	206
Rough	155, 156	Sheared	205
Silvered	159, 160	Molded	202, 203, 204
Holders	855	Stereotype	257, 258
Iron or steel	189, 190, 191, 192	Terne	197, 198, 199, 200
Paper	638	Tin	197, 198, 199, 200, 202
Powder, Goddard's	29	Coated with metal	197, 198, 199, 200
Steel, crucible	189	Platinum	1021, 1093, 1092
Plated—		Bars	1092
Articles	307	Caps	1093
Pins	286	Manufactures in chief value of ..	1093
Ware, gold or silver	305	Ingots	1092
Plates:		Plates	1092
Aluminum	263	Pointed tweezers	1093
Band-saw, steel	192	Retorts	1092
Carbon	127	Salts and compounds of	99
Cast-iron	226, 227	Scrap	1092
Cast-iron stone	226, 227	Sheets	1092
China—		Sponge	1092, 1093
"Ceneco"	123	Vases	1092
Decorated by American artist abroad ..	126	Vessels	1092
Copper	268, 269, 270	Weights	1093
Covered with metal	197	Wire	1092
Defined	258	Substitute	215
Dogskin	740	Playing cards	676
Earthenware, decorated with pictures		Pleading	1363
and letters	122	Plea in bar, acquittal on criminal charge ..	1264
Electrotype	257, 258	Pleasure yachts, entrance and clearance of ..	1225
Engravers'	205, 206	Pliers	242, 303
Floor, cast-iron	230	Plows	890, 893
Glass	1002	Plumage	
Goatskin	740	Game birds	730
Gypsum	133	Of wild birds prohibited importation ..	729, 730
Half-tone	257, 258	Plumbago	1094, 1551
Heel	228	Crucibles	129
Iron or steel	189, 190, 191	Plum:	
Coated with zinc, spelter, or other		Myrobolan, stocks, cuttings, or seedlings	
metal	197, 198, 199	of	386
Engraved for production of designs on		Pudding, confectionery	364
glass	257, 258	St. Julian, stocks, cuttings, or seedlings ..	386

	Page.		Page.
Plums	414	Polo blanco, lumber	317
Green or ripe.....	404, 405	Pomades	81, 82
Preserved in tins.....	408	Pomelos	418
Plumbers' knives	243, 244	Pomelo boxes	320
Plumes, crude, of birds of paradise	738	Pomerinza spirits	36
Plush —		Pompoms —	
Ribbons.....	606, 607	And aigrets, pig bristles.....	734
Strips of.....	797	Artificial flowers.....	735, 737
Plushes:		Pongees or Shantung, silks	622, 626
Angora goat hair.....	598	Pongee, silk imitation	632
Artificial silk.....	629	Pony —	
Black.....	860	As a horse.....	357
Cotton.....	499	Skins.....	744
Flax.....	545	Wild.....	357
Goathair or mohair.....	599	Poppy —	
Hatters', chief value silk.....	860	Petals made of silk.....	731
Mohair.....	598	Seed.....	389
Wearing apparel.....	581	Oil.....	70
Silk.....	606, 607, 608, 609	Porcelain:	
Wool.....	563	Artificial flowers of.....	127
Pneumatic machine, philosophical instruments	1083	Art works in.....	1197
Pocket —		Buttons.....	704
Barometers.....	1089	Glassware.....	141
Cigar lighters.....	878	Paintings.....	852
Communion service.....	1122	Panels, decorated.....	127
Leather cases.....	807	Wares.....	122, 123
Mirrors.....	168	Porch and window blinds —	
Sets and desk sets.....	807	Of bamboo, etc.....	327, 787
Pocketbooks	760, 1218	With colored threads.....	329
Leather.....	805	Pork:	
Pocket case surgical instruments	312	Cut up and pickled abroad.....	917
Pocketknives	236, 237, 239, 242	Fresh.....	917, 1043
Corn cutting.....	241	Porter in bottles or jugs	458
Pruning.....	242	Portfolios	674, 1437
Unfinished.....	241	Architectural.....	945
Podophyllum resin	21	Art.....	945
Poisonless colors, Gorman	44	Leather-fitted.....	805
Poker chips	709	To hold samples of lace.....	670
Polar bear and tiger skins with stuffed heads ..	747	Unbound.....	945
Polariscope testing:		Portieres, Job's-tears	868
Defined.....	341, 342	Portland cement	113
Of molasses.....	342	Nonstaining.....	112
Poles:		Porto Rico:	
Hop.....	1164	A foreign country for tariff purposes..	1714, 1715
Hoop.....	1164	American territory after April 11, 1899..	1715
Rough-cut.....	1167	Articles shipped to.....	1576
Telephone, electric light, trolley and telegraph.....	319	Importations into, from foreign countries.....	1389, 1457
Policemen's whistles of metal	754	Portrait lenses, patent	168
Polish:		Portraits:	
Amor's metal.....	28	Enameled.....	312
Stove.....	30	On porcelain.....	846
White cream shoe.....	29	Ports in possession of enemy	12
Polished —		Postal cards	941, 1120
Horn strips.....	826	Post-card album	675
Prisms.....	1002	Post cards:	
Polishing—		Celluloid, silk, or wood.....	681
And burnishing stones.....	1217	Embossed.....	655
Cloths.....	520	Lithographed.....	678
Earth.....	28	"Cutting size".....	658
Powders.....	28, 29	Feathered.....	681
Powder, red putty.....	30	Folded.....	658
Stones.....	132	Chief value of silk.....	679
Agate bookbinders' burnishers as....	133	Souvenir.....	681
Tam O'Shanter.....	131	Weight of.....	658
		Post horns	722

Posts:	Page.	Powder—Continued.	Page.
Cedar paving.....	319	Talcum, scented.....	82
Fence.....	319	Tempering.....	869
Iron or steel.....	188	Wood.....	1026
Wood.....	1164	Powdered—	
Potash:		Silk.....	625
Bicarbonate of.....	99	Tin.....	267
Carbonate of.....	1094, 1095	Powders:	
Chlorate of.....	99	Ink.....	65
Crude.....	1094	Proprietary.....	34
Cyanide of.....	1094	Toilet.....	81, 82
Hydriodate of.....	99	Power-transmitting tables for sewing machines.....	958
Iodate of.....	99	Power drill.....	1083
Muriate of.....	1094	Power of—	
Nitrate of, or saltpeter refined.....	99*	Appraising officer.....	1338, 1348
Permanganate of.....	99	Attorney.....	1682
Prussiate of red.....	99	Board of Appraisers—	
Prussiate of yellow.....	99	To review facts.....	1323, 1324
Refined carbonate of.....	1095	To issue commissions to take testimony.....	1325
Sulphate of.....	1094	Collector.....	1302, 1346, 1637, 1638
Water.....	466	Secretary of Treasury to determine standard coins.....	1622
Potassium.....	263	Prawns.....	1113
Iodid.....	65	Prayer—	
Metal, crude.....	264	Rugs, pile fabrics.....	500
Potato—		Shawls, wool.....	566
Cake.....	372	Precious stones:	
Flour, prepared vegetable.....	434	Bust of lapis lazuli.....	849
Meal or flour.....	1095	Diamonds, etc.....	766
Starch.....	434	Imitation.....	170, 172, 771
Soluble.....	64	Reconstructed.....	766
Potatoes.....	1095	Preferential duty.....	1523
From Sweden.....	1096	Preparation of entries.....	762
Ground desiccated.....	1096	Preparations:	
Rotten, nonimportation.....	1475	Chemical.....	17-24, 33-44
Sweet.....	1096	Cleaning or polishing.....	28
Pots, carbon, porous.....	133, 134	Coal-tar, not specially provided for.....	44-49
Pottery.....	1209	Medicinal.....	17-24, 33-44
Art works in.....	1197	Mercurial.....	31, 32
Pouches:		Of anatomy.....	1115
Tobacco, leather.....	856, 859	Of tallow.....	873
Small India rubber.....	826	Philosophical and scientific.....	1081-1090
Poultry:		Proprietary.....	33-37
For breeding purposes.....	428	Preservation of testimony taken before collectors.....	1421
Geese hybrid as.....	428	Presents:	
Immediate coverings of.....	428	Personal effects.....	1157
Live or dead.....	427	Not free of duty.....	1154
Paté de foie gras.....	428	Press:	
Pheasants, frozen.....	428	Art printing.....	303
Pigeons as.....	428	Board.....	635, 664
Turkeys and guinea fowls as.....	429	Cloths.....	936
Powder:		Camel's-hair.....	563, 567
Aluminum bronze.....	268	Mats, camel's-hair.....	565
Boxes, vanity cases, coin purses.....	1363	Paper.....	635, 664, 668
Brazing.....	869	Valued at less than 10 cents per pound.....	666
Bronze.....	267	Printing—	
Cases, jewelry.....	752	For collapsible metal tubes.....	302
Glass.....	171, 172	Collo type or photogelatin.....	303
Gold.....	312	Stamping, power.....	301
As pigment.....	97	Wall-paper printing.....	303
Magnesium.....	264	Presses, printing on embossing.....	302
Nail.....	82	Presumption of—	
Oxide of zinc.....	93	Correctness of collector's action.....	353, 1327, 1365
Puffs.....	700	Fraud, paragraph I.....	1265
Of wool.....	566, 567		
Sachet.....	84		
Silver.....	312		
Bronze.....	266		
Skimmed milk.....	1048		

	Page.		Page.
Priest's cloak and canterbury cap, not regalia.....	1124	Prohibited importations—Continued.	
Prickly pears.....	999	Not covered by the tariff act of October 3, 1913.....	1693
Primuline buff.....	59	Plumage of birds.....	729
Printed—		White phosphorus matches.....	725
Beer mats of pulp.....	752	Tea.....	1144
Blotters.....	144, 674	Projection lenses.....	164, 165, 167
Matter—		Proof—	
Not books.....	947	And gauge of spirits.....	443
On gelatin articles.....	670	Etchings unbound, artists'.....	1194
On coated paper.....	648	For free entry.....	902
Paper bags.....	681	Must be filed with the collector.....	1470
Plates, unassembled.....	674	Of commercial designation.....	1730
Sermons.....	1061	Of destruction or nonimportation.....	1469
Sheets, unbound.....	674	Of loss.....	1666
Views of scenes in Hawaii.....	673	Required for proper classification.....	1730
Woodcuts.....	947	That protest and appeal were made.....	1408
Woven fabrics of silk.....	625	Proprietary preparations.....	34
Printer's—		Propeller shaft.....	1661
Ink.....	65	Prospective protest on future importations.....	1408-1410
Old rollers.....	865	Protegit.....	872
Printing—		Protests:	
Cards.....	667	Alternate claims in.....	1376, 1398, 1400, 1403
Chromatic process.....	674	Protest—	
Paper.....	636-637, 639, 1077, 1078	After reliquidation.....	1370, 1395, 1398
Press—		Against charges, timeliness of.....	1373
Collotype or photogelatin.....	303	Against liquidations on pro forma entries.....	1396
Falcon.....	303	Against reappraisement.....	1289, 1392
Presses.....	296	Against reliquidation.....	1361
Prints:		Against suit on bond.....	1394
Color.....	672	Against value not valid.....	1487
Periodicals, fashion.....	1061	Allowed by collector.....	1367
Gelatin.....	658	Alteration of.....	1366
Lithographic on canvas.....	555, 659	Amendment of.....	1386, 1388
Post cards.....	658	Before liquidation.....	1401, 1412
Mounted.....	661	Before withdrawal from warehouse.....	1390
Of varying thicknesses.....	659	By agent.....	1412
On cotton cloth not a work of art.....	841	Can not reserve rights to further protest.....	1397
Tissue-paper coverings.....	660	Claiming wrong paragraph and correct rate.....	1395
Priority of claims.....	1700	Confined to articles specified therein.....	1413
Prismatic glass.....	165, 172	Covering two entries with the same rate of duty.....	1361
Prisms, partly manufactured.....	165	Defaulted.....	1344
Prison-made goods:		Entry for warehouse and transportation place filed.....	1396
Disposition of.....	1548	Fees on reappraisement.....	1337
From Philippines.....	1548	Fee, waiver of.....	1360, 1361
Private law library.....	949	Filed on Sunday.....	1391
Prize-fight films.....	855	Function of.....	1366
Prize packages.....	1712	Indefinite.....	1397
Proceeds of sales of unclaimed goods.....	1656	Invalid in condemnation proceedings.....	1394
Production of—		Invalid when based upon an infraction of the statutes.....	1395
American artists.....	1201	Lost, copies admitted.....	1400
Bill of particulars.....	1708	Mailed to collector.....	1396
Books or records by importers.....	1462	Must be specific.....	1377, 1378
Products of—		Must claim correct rate.....	1396
France imported from Great Britain.....	1520	Not signed by importer, owner, consignee, or agent.....	1365
The forests of Maine.....	1219	On imports into—	
Profile paper.....	662	Hawaii.....	1389
Pro forma invoice:		Porto Rico.....	1389, 1715
Additional duty on.....	1283, 1290	Imports from the Philippines.....	1388, 1389
Appraisalment on.....	1245, 1282	On reliquidation.....	1397, 1382
Clerical error in.....	1275, 1280	On shortage.....	1401
Entry on.....	1242, 1243, 1244, 1281	On withdrawal entries.....	1394
When not binding.....	1284		
Professional books.....	1096		
Prohibited importations.....	1712		
Aigrets and other plumage.....	731		
Grouse.....	731		

Protest—Continued.	Page.		Page.
Papers and exhibits to be forwarded with	1397	Purchase price.....	1238
Payment of duty before forwarding.....	1398	Greater than market value.....	1299
Review of reappraisement by.....	1340	“Purchased” defined.....	1287
Restricted by specific language.....	1379	Purchased goods:	
Sets of, as alternative.....	1395	Evidence of.....	1253
Signed by several protestants.....	1362	Invoices of.....	1238, 1240, 1241, 1624
Signed by a stranger.....	1368	Pure foods and drugs act.....	1693
Statutory provision for.....	1358	Pure-food law, samples.....	1700
Sufficiency of.....	635, 1362, 1363, 1370, 1373, 1377, 1380, 1385, 1386, 1390-1398, 1414, 1417, 1430, 1662	Purses:	
Suspension of.....	1388	Beaded.....	685
Timeliness of.....	1362, 1369, 1372, 1373, 1375, 1383, 1393, 1395, 1401, 1408, 1409, 1418	Metal.....	764
Unauthorized.....	1397	As jewelry.....	752
Unsupported by evidence.....	1328	Silver or German silver.....	753
Vague and multifarious.....	1371	Purves ribbed boiler tubes.....	235
With typewritten signature.....	1373	Putty, red.....	30
Prune—		Putz—	
Butter.....	413, 414	Kalk.....	112
Juice.....	461	Paste in bricks.....	30
Wine.....	461, 463	Pomade.....	29, 30
Prunelles.....	414	Putzpulver.....	116
Pruning—		Puzzles:	
Knives.....	236, 237, 238	Mirror.....	711
Pocketknives.....	242	Not toys.....	716
Shears.....	891	Printed paper lithographed.....	719
Prunes.....	414	Pyridin.....	46
Crushed fruits preserved.....	408	Pyrites:	
Prussic acid.....	888	Residuum from burnt.....	1021
Prussian blue.....	87	Sulphur ore as.....	1131
Prussiate of soda, yellow.....	102, 103, 104	Pyrometer tubes, porcelain.....	124
Public—		Pyroxylin—	
Documents.....	941, 942	Liquid, solutions of.....	51
Stores, a bonded warehouse.....	1613	Rods.....	53
Publications for gratuitous private circula- tion.....	939, 940, 942	Sheets.....	52
Pudding, plum.....	364	Smokers' articles.....	859
Puddle ducks, wool.....	566	Toothpicks.....	326
Pull cards.....	656		
Pulled wool dutiable as scoured.....	1190		
Pulp:			
Beet.....	863		
Machines, lava stones for.....	183		
Manufactures of.....	752		
Olive.....	863		
Sesame.....	873		
So-called paper stock.....	1077		
Wood.....	1164, 1537, 1686		
Rosed.....	1170		
Pulpboard in rolls.....	635		
“Pulp lining”.....	669		
Pulpits.....	1122		
Pulu.....	1101		
Pumice stone.....	114		
Manufacturers of, Bimsteins as.....	114		
Powdered.....	114		
Scouring bricks of.....	114		
Trimmed.....	114		
Pumpnickel.....	933		
Pumpings or drainings of sugar.....	344		
Pumpkin seed.....	392		
Pumps:			
Bicycle.....	222		
Earthenware.....	129		
Punk.....	1026		

Q.

Quassia:	
Cut, drug, advanced.....	56
Wood as crude drug.....	981
Quarries.....	108, 110
Quarry tiles.....	108, 110
“Quart,” construed.....	411
Quartz, ground.....	129
Quarterly publications.....	1060
Quebracho extract.....	1136, 1139
Containing extract of myrobalan.....	867
Quicksilver.....	287
Bottles or flasks.....	287, 907, 908, 909
Product of Spain shipped from London, additional duty.....	1297
Quill toothpicks.....	326
Quills:	
Artificial.....	732
Cleaned and dyed.....	739
Filled with tooth powder.....	84
Goose.....	731
Manufactures of.....	821, 827
Penholders.....	285
Prepared or unprepared.....	1217
Turkey.....	738
Quillings.....	774
Quillaya or soap-bark siftings.....	984
Quilts:	
Cotton, part wool.....	522
Eiderdown.....	740

		Page.			Page.
Quilts—Continued.			Rake heads.....		892
Jacquard figured cotton.....	521		Rakes:		
Of down.....	729, 730		Agricultural implements.....	892	
Quince—			Lawn.....	892	
Seed.....	981, 985		Ramie—		
Stocks, cuttings, or seedlings of.....	386		Braids, stained or colored.....	692	
Quinces, green or ripe.....	404, 405		Fabrics, plain woven.....	549	
Quinia, sulphate and alkaloids of.....	1101		Gill nets.....	532	
Quinine:			Hat braids.....	692	
Ampoules of.....	39		Manufactures of.....	551, 552	
And urca dihydrochlorat.....	1101		Noils.....	865	
Capsules of.....	39		Seines.....	532	
Glycerophosphate.....	1101		Sliver.....	532	
Quoits.....	978		Strips, braid material.....	553	
Quotations, hollow quads as new type.....	288		Threads, twines, and cords.....	530	
R.			Underwear of.....	508	
Rabbit—			Webs.....	532	
Fur—			Yarns.....	531	
Carroted.....	747		Rape meal.....	1009	
Hoods of.....	751		Rapeseed.....	1107, 1534	
Hair—			Oil.....	70	
Caps.....	747		Or colza oil.....	72	
Yarn.....	595		Rasps.....	245, 246	
Skins—			Raspberry—		
Undressed.....	1115		Cordial.....	462	
Undressed clippings of.....	999		Juice.....	463	
Racing shells:			Pulp.....	413	
Not vessels.....	333		Shrub.....	461	
Entry of, under bond.....	1554		Rat—		
Raceways for ball bearings.....	194		Traps, wire.....	216	
Racquet gut strings.....	961		Virus.....	905	
Raddle, polishing powder.....	116		Ratafia.....	443	
Radiogen-Trinkwasser.....	38, 1102		"Rats," hair rolls, part wool.....	581, 582	
Radiometers.....	1090, 1091		Rattan—		
Radish seed.....	389		Advanced.....	325	
Radium—			Articles.....	335	
And containers.....	1102		Bags.....	331	
Residuum.....	1009		Baskets.....	331	
Raffia—			Canes.....	335	
Bands.....	694		Chair reeds.....	1178	
Braids.....	826		Fishing poles.....	335	
Cloth.....	825		For chairs.....	325	
Rafters, lumber.....	1172		Reeds.....	324, 1176, 1178	
Rag pulp.....	1179, 1182		Round, core.....	323	
Rags.....	927, 1075, 1102		Slab.....	1176	
Meaning of the word.....	1103		Broom, split.....	324	
Wash.....	520		Split, cut into lengths.....	1175	
Waste bagging.....	864		Sticks, for whip handles.....	335	
Woolen.....	1102		Whipstocks.....	335	
Rails, steel, crop ends of Bessemer.....	207		Ravison meal as manure.....	1009	
Railroad—			Rawhide shoes and slippers.....	872	
Tickets and pamphlets.....	941		Razor—		
Ties.....	319		Blades.....	236, 237, 238	
Railway—			Blanks, coverings.....	1438	
Bars.....	1103		Handles.....	239, 240	
Fishplates.....	197		Steel, cold rolled.....	200	
Frogs.....	205		Razors:		
Mail car.....	6		Corn.....	239, 242	
Splice bars.....	197		Finished or unfinished.....	237	
Tires.....	262		Parts of, separately imported.....	238	
Wheels.....	262		Safety, without blade.....	240	
With axles fitted.....	262		Reading glasses.....	166, 167	
Raincoats:			Reapers, agricultural.....	890	
Part wool.....	497, 566		Reappraisal:		
Waterproof.....	824		Absence of samples.....	1338, 1340	
Raisins and other dried grapes.....	414		Advances over appraised value.....	1350	
Rajah spark plugs, porcelain.....	125				

Reappraisement—Continued.	Page.	Reeds:	Page.
After liquidation.....	1356, 1398	Chair.....	323, 324, 325
Appeals—		China.....	323
By collector, reasonable time.....	1341	False.....	215
Not signed.....	1335	Rattan.....	323, 324, 1178
Notice of.....	1336	Round.....	325
Right of not defeated by faulty in-		Unmanufactured and in the rough.....	1176
voice.....	1336	Whip, hard, soft.....	324, 1177
Time for.....	1333	Red bean lumber.....	317
By local appraiser void.....	1338, 1349	Red cedar logs.....	1177
By merchant appraisers.....	1351-1358	Red cerate of spermacitti.....	19
Correction of return.....	1345	Red gum, lumber.....	317
Entry without invoice.....	1350	Red lauan wood.....	318
Examination of merchandise or samples		Red lead.....	91
necessary.....	1351	Red peppers, Spanish.....	371
Fee required.....	1333, 1337	Reduction of—	
Finality of.....	1341, 1342, 1343	Entered value, when not allowed.....	1483
Imperfect record of.....	1341	Foreign coins to United States currency..	1622
Invalid.....	1346	Reel stock, manufactures of wood.....	335
Items on invoice not mentioned in appeal.	1336	Reels, fishing.....	256
Lawful cures defects in prior appraise-		Reflectors:	
ment.....	1348	Enameled steel.....	251
Legality of.....	1335, 1336, 1337, 1343, 1346	Glass—	
Liquidation pending void.....	1338	Fluted.....	160
Merchandise in bonded warehouse.....	1587	Silvered.....	144
Open hearings.....	1340	Lamp, glass.....	149
Protest against.....	1289, 1350	Refined:	
Records, what constitutes.....	1344	Carbonate of potash.....	1095
Rehearing on.....	1337	Petroleum.....	1070
Review of, by Secretary of the Treasury		Sugar.....	344
not authorized.....	1339	Refining of crude metals and ores.....	1570, 1571
Rule of, same as for appraisement.....	1337	Refrigerating plant.....	1664
Samples necessary to.....	1632	Refund of duties—	
Seized goods.....	1279	Additional for undervaluation.....	1286
Statutory provision for.....	1332	Estimated, excess of.....	1479
Validity of.....	1316, 1338, 1339, 1342, 1343	Estimated, on seized goods.....	1286
Verbal request for not sufficient.....	1349	On merchandise destroyed by fire while	
Waiver of samples.....	1339	in customs custody.....	1614
Reagent bottles, preparation jars.....	1084	Pending appeal.....	1484
Reasonable cause, certificate of.....	1263	Under court decision.....	1502
Reasonable doubt, forfeiture.....	1261	Under decisions by Board of General	
Receipts, hermetically sealed.....	1211	Appraisers and circuit court.....	1479, 1483
Reciprocity—		Regalia for use of a religious society.....	1121, 1125
Agreements, expiration of.....	1513	Regulations—	
Application to various articles.....	1513-1522	Authority of Secretary to make for—	
Favored-nation clause.....	1513	Animals for breeding.....	898
Bronze statuary.....	848	Animals for exhibition.....	902
On spirits in fruit.....	411	American goods exported and re-	
Statutory provision for.....	1509-1512	turned.....	907
Treaty with Great Britain.....	1738	Articles entered under bond for	
Reconstructed—		export.....	1554
Emeralds.....	768, 773	Articles in passengers' baggage.....	1151
Or artificial rubies.....	773	Ascertaining alcohol in wines and	
Rubies, watch jewels.....	291	fruit juices.....	449
Record paper.....	661	Baggage in transit.....	1492
Recording wax.....	820	Books, magazines, and periodicals... ..	1242
Records:		Books, maps, etc., for libraries, and	
Phonograph.....	838	institutions.....	947
Phonographic, master.....	1314	Bonded manufacturing warehouses... ..	1565
Recovered—		Cattle and hides, importation of.....	1545
Gutta-percha.....	1012	Convict-labor goods.....	1547
Oil.....	1008	Copyrighted articles.....	1691
Rubber.....	1018	Denaturing alcohol.....	1573
Sulphur.....	1133	Drawback.....	1574
Recovery of duties—		Entry of tobacco.....	352
Paid after delivery.....	1709	Fruit boxes of domestic shooks.....	320
Paid on nondutiable charges.....	1453, 1709	Iron and steel drums.....	910
Overpaid.....	1413	Inspection of records of General Ap-	
		praisers.....	1423

Regulations.	Page.	Reliquidation—Continued.	Page.
Authority of Secretary to Secretary to make for—Continued.		Warehouse goods.....	1370, 1401
Lead ores for smelting, in bond.....	276	While protest pending.....	1586
Leins for freight.....	1645	When new protest will not do.....	1379
Marking, stamping, and labeling goods.....	1539	Remission of—	
Materials for construction of vessels.....	1557, 1561	Duty by Secretary of Treasury.....	1639
Nonimportation or decay of perishable goods.....	1463	Penalty, forfeiture, conditions precedent.....	1740
Olive oil, denaturing.....	1064	Remanet silk from rags.....	626
Philosophical and scientific articles for institutions.....	1082	Renaissance—	
Photographic films.....	854	Braids.....	790
Professional books, implements, and tools of trade.....	1096	Lace articles.....	797
Reimportation of articles on which no internal revenue was paid.....	1580	Rennet tablets.....	1104
Sale of goods remaining in warehouse or unclaimed.....	1653	Rennets, raw or prepared.....	1104
Salt for curing fish.....	1105	Repairs—	
Smelting and refining ores.....	1570	Abroad, character of.....	911
Statuary, regalia, and gems for churches.....	1121	Regulations governing.....	910
Supplies for vessels.....	1562	To vessels engaged in foreign and coasting trade, section 3114 R. S.....	1338-1340
Tare and draft.....	1666-1670	Docking charges.....	1639
Tea examination.....	1143	Jurisdiction of board.....	1381
Works of art.....	1195, 1197, 1206	Laid up in winter quarters.....	1640
Works of art by American artist.....	1199	Repainting.....	1639
Wrecked goods.....	1563	Repeal of statutes.....	1733-1736
Zinc ores for smelting in bond.....	293	Rep or moir, cotton.....	481
Compliance with condition precedent.....	911-923, 1084, 1156, 1195, 1465, 1560	Repugnant tariff provisions, Epsom salts or sulphate of magnesia.....	887
Distinguished from instructions.....	1730	Reredos, or an altar piece.....	1123
Held void.....	1467, 1559	Rescue appliances, tools.....	1052
Legality of.....	899, 900, 1155, 1730	Resemblance, identity.....	881, 886
Validity of sugar.....	342, 343	Residence of a—	
Rehearing, discretion of board to grant.....	1319, 1323, 1501	Married woman.....	1152, 1153, 1154
Reimportation foreign goods.....	6, 11, 12	Minor child.....	1154
Reimported—		Resin—	
Grain bags.....	1663	And manganese.....	19
Mica.....	8	Crude gum.....	961, 983
Tobacco of American production.....	1581	Pitch.....	21, 872
Whiskey.....	1581	Resinoid of orris root.....	56
Dutiable quantity.....	10	Resorcin.....	48, 49
Reliquaries, manufactured of metal.....	307	Purified.....	22
Reliquidation—		Resistance strips, nickel alloy.....	283
Absence of protest.....	1388	Retort carbon.....	968
After one year.....	1480, 1483, 1485, 1489, 1619	Gas, ground.....	129
By collectors within one year from entry.....	1486	Linings, lava blocks for.....	108
By order of the Secretary of the Treasury.....	1618, 1619, 1620	Settings.....	881
Data in record only to be considered.....	1376, 1377	Retorts, gas.....	133, 134, 135
Does not include reappraisement.....	1486	Retroactive operation of statutes.....	1222, 1523
Effect upon pending protests.....	1381	Return of—	
Entries not corresponding with decision.....	1366	Appraiser, when conclusive.....	1312
Fraud, statute of limitations.....	1480, 1481	Board—	
Limitation on dates from date of entry.....	1490	Certified statement of facts.....	1332
On order of board followed by a new protest.....	1369	Must be complete.....	1506
Protests against.....	1361, 1368, 1374, 1379, 1384	Protests to collectors.....	1389
To correct error limited to one year from date of entry.....	1484	Revenue laws:	
Under act of February 8, 1875.....	1488	Constitutionality of.....	1224
Under decision of General Appraisers.....	1374	Liberal construction of.....	1727
Under conditional decision, duty of collector.....	1377	What are.....	1730, 1731
		Review—	
		By Circuit Court.....	1373
		By courts, findings of Board of General Appraisers.....	1328
		Of findings of—	
		Collectors of customs.....	1328
		General Appraisers.....	1327
		Questions of fact.....	1324
		Revolvers.....	249
		Reward:	
		Claim for, assignability of.....	1745
		Payments to trustee in bankruptcy.....	1745

	Page.		Page.
Rewarehouse goods, appraised at first port..	1297	Rifles—Continued.	
Rhamnus, sirup of.....	56	Muzzle-loading.....	247
Rhapsodia.....	465	Single-barreled breech-loading.....	247
Rhea plumage.....	730	Sporting.....	247
Rhinestone buttons.....	705, 706	Rims, vegetable, ivory button.....	707
Rhine wine mousseux.....	448	Ring—	
Rhodium.....	1021	Grease.....	1135
Salts and compounds.....	99	Waste, wool.....	1192, 1194
Rhododendrons.....	1108	Rings:	
Rhubarb roots:		Agate.....	256
For cultivation.....	387	Battenberg.....	525
Split.....	982	Bisque.....	132
Rib grass seed.....	1108	For incandescent burners, bisque.....	126
Ribbed glass.....	155, 156	Celluloid.....	1030
Ribbons:		Magnesia.....	129, 132
Artificial silk.....	629	Ripple cloth.....	597
Bandings, silk.....	611, 612	Rivet rods, iron or steel.....	209, 210
Bullions.....	271	Rivets.....	259, 1030
Chiffon, silk.....	613, 620	Automobile tire.....	259
Cotton.....	541	Ornamental.....	259
Satin-back.....	502	Steel.....	259
Typewriter.....	516	Roble, cabinet wood.....	317
Flax, hemp, or ramie.....	540	Rocoo and Annatto.....	904, 905
For booklets.....	655	Rochellesalts.....	25
India rubber.....	271	Rock—	
Lame or lahn.....	271	Crystal.....	130
Metal threads.....	271, 777	Fused.....	178
Plush.....	606	Imitation of, in form of lenses.....	772
Or velvet.....	499	Intaglios.....	771
Silk.....	611, 614, 1731	Manufactures of, not specially pro-	
And cotton.....	517	vided for.....	177, 178
Gauze or chiffon.....	613	Plaster.....	112, 113
Trimnings.....	613	Rockets.....	723
Velvet.....	609, 1676	Rockingham—	
With ornamental designs.....	612	Earthenware.....	117
St. Etienne silk.....	612	Ware.....	118
Tinsel wire.....	271	Rodinal.....	48
Velvet.....	606, 607	Rods:	
Wire.....	215	Aluminum.....	263, 264
Wool.....	584	Connecting.....	195, 203, 204
With Picot edge.....	612	Copper.....	268, 269
Ric Rac braids.....	783	Fishing.....	256, 257
Rice—		For construction of vessels.....	1558
Bead curtains.....	685, 687	Glass—	
Bengal or Patna.....	362	Black.....	174
Brown.....	362	Molded.....	144
Broken.....	361	Towel.....	173
Cleaned.....	361	Iron.....	186, 187
Discriminating duty.....	1551	Swedish, bundles or coils.....	210
Flour.....	362	Iron or steel—	
Ground.....	362	Flat.....	209, 210
Before shipment.....	1453	Nail.....	209, 210
Mixture of goods.....	361	Rivet.....	209, 210
Starch.....	434	Screw.....	209, 210
Uncleaned.....	361	Wire.....	209, 210
Wine.....	448	Magnesium.....	132
Rice-hull ashes.....	872	Pyroxylin.....	53
Ricicolic acid.....	70	Piston.....	195, 203, 204
Rickrack braid.....	790	Steel.....	194
Rifle—		Screw.....	211
Barrels, rough bored.....	247	Steel—	
Parts.....	247, 248	Polished.....	210, 211
Rifles:		Umbrella.....	261
Air.....	247	Tempered or partly manufactured.....	209, 210
And shotguns, combination.....	248, 249	Wire, rolled.....	202
Breech-loading.....	248	Roentgen-ray—	
Fitted with telescopic sights.....	248	Paper.....	648
		Screens.....	651

	Page.	Rubber—Continued.	Page.
Roll sulphur.....	1132	Clowns.....	720
Rolled oats.....	359	Dental.....	823, 826
Roller bearings.....	193	Dolls and doll heads.....	720
Rolling-on frame.....	301	Dust.....	865
Rolls:		Faced cloth used in making card cloth-	
Cast-steel, for rolling mills.....	301	ing.....	823
Steel pattern.....	258	Flower syringes.....	823
Roman candles.....	723, 724	Hard, druggists' sundries.....	822
Rondelles, glass.....	151	India, bulbs of.....	823
Roofing:		Crude, in sheets.....	1018
Felt.....	635, 988	Fabrics.....	822
Slates.....	184	Recovered from scrap or refuse.....	1018
Root—		Scrap.....	1017
Flour.....	1218	Toys.....	271
Stocks, flower.....	382	Tubing.....	823, 824
Roots:		Mouthpieces for pipes.....	858
Bulbous, flower.....	382	Recoil pads.....	825
Drugs—		Recovered.....	1018
Advanced.....	54	Scraps of new or worn.....	1018
Crude.....	979	Scrap.....	1019
Hop.....	1016	Seeds.....	393
Imported for Department of Agriculture.....	1091	Sheet, raw plantation.....	1018
Licorice.....	65	Sponges.....	825
Lily.....	371	Thorns.....	731
Lily-of-the-valley.....	385, 1057	Toys.....	720
Sarsaparilla.....	65	Tubing for artificial flowers.....	826
Rope:		Rubbing bricks.....	130
Catgut.....	819	Rubies, reconstructed.....	766, 773
Cattle-hair.....	874	Ruble, Russian, value of.....	1628
Chain, when parts of jewelry.....	762	Ruby talc.....	117
Ends.....	1075	Ruchings.....	774, 776, 777
Waste, old junk.....	1026	Rugs:	
Wire.....	212, 213, 214, 216, 217	Angora goat hair.....	598
Steel, with jute cores.....	218	Antique.....	591, 1216
Roping, wool.....	561	Aubusson, Axminster, Berlin, oriental.....	587
Rosanolin.....	45	Brussels.....	591
Rosaries.....	689, 754, 885, 1123	Cork, carpet.....	537
Glass.....	173	Corticene.....	537
Metal.....	685	Cotton.....	588, 589
Rosa rugosa seedlings.....	387, 388	Daghestan.....	588
Rosary chains.....	687	For floors, of wool.....	590
Rose:		Fur, in part of wool.....	745
Artificial oil of.....	76	Grass.....	534
Cuttings.....	388	Japanese.....	536, 588
Plants.....	346, 387	Jute.....	536
Water.....	83, 84	Linoleum.....	537
Rosemary—		Matting.....	534
Oil.....	74	Measurement of.....	588
Seed.....	393	Of carpeting of wool.....	590
Roses as nursery stock.....	389	Oilcloth.....	537
Rosettes, silk ornaments.....	788	Oriental.....	587, 1441
Rosewood, cabinet wood.....	315, 318, 1165, 1172, 1174	Seamless.....	588
Rosolic acid.....	43	Steamer and auto.....	573, 574
Rottenstone.....	1129	Straw.....	534, 535
Rovings, cotton.....	469	Sundour cotton.....	589
Roving—		Traveling.....	569, 571, 597
Waste.....	1192	Wilton, woven whole, for rooms.....	588, 591
Wool.....	561	Worsted hearth.....	571
Royalty—		Woven whole, for rooms.....	588
As part of market value.....	1435, 1438	Ruhmkorff coils.....	1090, 1091
On books.....	1315	Rule of construction, revenue laws.....	1731
Rubber—		Rule of reappraisement the same as for ap-	
Animals.....	720	praisement.....	1337
Balloons, uninflated.....	711	Rules of classification.....	1719-1733
Balls, new, defective.....	1018	Rum, oil or essence of.....	1217
Bit covers.....	1036	Rupee, value of.....	1618, 1621

	Page.	Sailor suits:	Page.
Rutabaga seed.....	389	Cotton, with rubber cord.....	499
Ruthenium.....	1021	Wool trimmed with cotton braid.....	583
Rush, unmanufactured.....	1006	Sainfoin or French grass seed.....	1107, 1110
Russian—		Saint John's bread or bean seed.....	1107
Bolt rope.....	530	Sake—	
Camel's hair.....	1182	As still wine.....	455
Lambskin.....	1116	Leakage of.....	452, 453
Rubles, paper and silver.....	1624, 1628	Salame, not sausage.....	1045
Sable skins, dressed.....	745	Salammoniac.....	25
Sardines.....	403, 993, 994	Sale of unclaimed goods.....	1656
Sheetings of jute or hemp.....	1218	Salap or salop.....	1105
Sugar.....	1538	Saleratus.....	102, 10
Rust of iron manufactures, no allowance		Salicin.....	1105
for.....	219, 1615	Salipyrrene.....	24
Rye:		Salicylic acid.....	15
Bread.....	933	Salmon:	
Bounty on, by Germany.....	1534	Boned.....	397
Flour.....	1104	Fresh.....	991
Straw, split.....	876	Frozen.....	992
		Packed in ice.....	993
		Pickled.....	990
		Thread or twine.....	531
		Salol.....	23, 39, 40
		Saloguinine.....	1101
		Sal soda.....	102
		Salt.....	1107, 1460
		Bath, perfumed.....	83
		Cake.....	1118
		Celery.....	879
		From Canada.....	1106
		From Germany.....	1106
		From St. Martin, W. I.....	1107
		From Turks Island.....	1107
		In bags, sacks, or barrels, or other pack-	
		ages.....	1105, 1106, 1453
		On fishing vessel.....	1643
		Sacks.....	1438
		Withdrawn from bond.....	1107
		Salted—	
		Beans, in wooden boxes.....	368
		Melon seed.....	391, 868
		Salt peter.....	1095
		Refined.....	99
		Salts:	
		Aniline.....	49
		Antimony.....	265
		Chemical—	
		Containing alcohol.....	17
		Not specially provided for.....	17
		Cinchona bark.....	1101
		Coal-tar products.....	49
		Cocaine.....	77
		Codein.....	80, 81
		Egonine.....	77
		Epsom.....	887
		Glauber.....	102, 103
		Glycerophosphoric acid.....	39
		Karlsbader, as sulfate of sodium.....	103
		Mineral.....	1049
		Opium.....	77
		Radium.....	1102
		Rochelle.....	25
		Selenium.....	1102
		Soap containing.....	101
		Thorium.....	279
		Uranium.....	1149
Sabidilla, seeds.....	985		
Sable skins, dressed, Russian.....	745		
Saccharate, liquid soap.....	101		
Saccharine.....	345		
Saccharum.....	875		
Sachet powder in bottles.....	84		
Sachets not toilet preparations.....	811		
Sacking, jute, or horse cloth.....	557		
Sacks:			
Burlap, containing oats.....	1444		
Plain jute fabrics.....	546		
Salt.....	1438, 1453		
Sacred image, regalia.....	1122		
Saddlebags of carpeting.....	590		
Saddle—			
Horses, entry of, under bond.....	1554		
Leather.....	1028		
Nails, not parts of saddles.....	1030		
Trees.....	1037		
Saddlery.....	1030, 1034, 1038		
And harness and parts of.....	1037		
Antique.....	1036		
Leather.....	1028		
Saddles:			
Bicycle.....	222		
Pigskin.....	1034		
Sadiron.....	226, 227		
Safety—			
Fuses.....	728		
Matches.....	727		
Pins.....	285, 286		
Razors without blades.....	240		
Safflower, extract of.....	60		
Saffron—			
And saffron flower.....	59, 60		
Cake.....	59, 60		
Substitute.....	60		
Sage.....	435, 436		
Seed.....	393		
Sago:			
Crude.....	1104		
Flour.....	1104, 1105		
German.....	1104		
Portland, or arrowroot.....	1105		
Sail cord.....	531		

	Page.		Page.
Salts and compounds of—		Sapo—	
Bismuth.....	99	Cresol.....	969, 1411
Gold.....	99	Viridis.....	102
Platinum.....	99	Saponin.....	21
Rhodium.....	99	Sapona Della Regina.....	102
Silver.....	99	Sapphire bearings.....	130
Tin.....	99	Sapphires—	
Salved cargo, duty on.....	1230	For phonographs.....	769
Salvage—		Imitations of.....	768
Claim may include duty saved to the		Sapucaia nuts.....	425
United States.....	1615	Sardine tins.....	1210
From wreck.....	1652	Sardines.....	395, 398, 400
Salves, proprietary.....	34	In boxes.....	404
Sample—		Russian.....	403, 993, 994
Books.....	674	Salted or smoked in tins.....	398
Cigars.....	356	Sardelles, or sardellen.....	395
Package, fees on.....	1637	Sardelles in oil.....	404
Samples:		Sardonyx, imitation of.....	768
Appraisement of.....	1308	Sarreguemines earthenware.....	122
Absence of, on reappraisement.....	1333, 1338	Sarsaparilla.....	466
Color cards not.....	1556	Root.....	65
Commercial traveler's, from Great Britain.....	1556	Sar sum, drug advanced.....	55
Drummer's, sent to Canada.....	1098	Sash—	
Dutiable on appraised value.....	1273, 1556	Cord, plaited jute.....	557
Dutiability of.....	1304, 1555-1557	Lace borders.....	799
Entry of, under bond for export.....	1554, 1556	Muslin.....	798
Examination of, necessary.....	1348, 1631	Sash-weight flask.....	1053
Fashion plates not.....	1554	Sashes:	
Identification of.....	1710	Iron or steel.....	188
Inspection of.....	1333	Silk, military.....	628
In public stores.....	1631	Steel, window.....	189
No commercial value.....	1349, 1556	Satchels, leather, fitted.....	805
Not retained.....	1357	Sateen, cotton Jacquard brocade.....	504
Not shown to be taken from the importation.....	1367	Satin white, or artificial sulphate of lime.....	87
Not part of importation.....	1372	Satinwood.....	315, 1165, 1172, 1174
Reappraisement on.....	1351	Satsumaage, comfit.....	408
Reappraisement on consular.....	1632	Satsuma ware.....	121
Slashed.....	1336	Saturating paper.....	635
Wool.....	1189	Sauce, Worcestershire.....	873
Sampling:		Sauces of all kinds.....	375, 378
Commercial methods provided for.....	276, 277, 293	Sausage:	
Ores and metals.....	1570	Bavarian.....	1044
Sugars, method of.....	341	Blood pudding.....	1044
Sulphur olive oil.....	1065	Bologna, canned.....	1046
Sanctuary lights.....	727	Casings.....	934
Sand.....	1129, 1130	Frankfurter, in tins.....	1045
Iron or steel.....	208, 209	Skins.....	1217
Manufactured.....	988	Sauerkraut.....	1217
Monazite.....	279	And bologna sausage mixture.....	374
Paper.....	648	Savory leaves in bales.....	983
Sandalwood.....	981, 984	Savon d'Iode.....	36
Chips.....	56, 984	Saw—	
Dust and clay.....	1026	Blades.....	260
Logs.....	1170	Frames.....	260
Sand-blast machines.....	958	Plates.....	189, 190, 191, 192
Sanguin.....	59	Steel, band, crucible.....	204
Sandstone:		Sawdust.....	873, 1164
Building or monumental.....	180, 181	Used for dyeing and tanning.....	1170
Metates.....	183	Sawed lumber.....	1169, 1172, 1173
Slabs.....	182	Saws:	
Unmanufactured.....	1129	Back.....	260
Sandwich paste.....	867	Band, steel.....	260
Santogen.....	36	Butcher.....	260
Santonin.....	1107	Circular.....	260
Sap yellow, as a lake.....	97	Crosscut.....	260
		Drag.....	260

Saws—Continued.	Page.	Scrap—Continued.	Page.
Hand.....	260	Mica.....	117
Mill.....	260	Platinum.....	1092, 1093
Pit.....	260	Rubber, old or refuse.....	1018
Saxony carpets.....	585	Steel, importations of.....	912
Scale:		Tin.....	1146
Balance and weights.....	1088	Tobacco.....	358
Barometer.....	142	Scraps of sheepskins with wool on.....	1194
Plates, earthenware, decorated.....	121	Screw rods.....	209-211
Scales:		Screens:	
Analytical.....	1087	Bamboo, straw, wood, or composition of	
Official.....	1669	wood.....	326
Scalloped—		Chief value paper.....	682
Articles.....	788, 797	Cotton, in a framework of wood.....	791, 792
Cotton damask articles.....	788	Cotton, paper, and wood.....	802
Scalpels.....	239	Embroidered.....	793
Scammony resin.....	19, 21	Fire, painted.....	526
Scapularies:		Fluorescent, coated paper.....	649
Printed matter.....	528	Japanese paper, painted.....	851
Wool and cotton.....	570	Wood and embroidered silk.....	802
Scarfs:		Painted cotton.....	843
Bandana, in the piece, wearing apparel..	498	Paper.....	664
Battenberg.....	778	Photographic color process.....	149
Cotton—		Roentgen ray.....	651
In the piece.....	481, 795	Wood.....	327
Knitted.....	510	Wool carpeting.....	590
Egyptian.....	792	Screenings:	
In the piece.....	583	Barley.....	358, 359
Scarving, flax hemstitched.....	551	Oat.....	360
Scarfpin, gold horseshoe.....	1047	Screw—	
Scent bottles, silver, not jewelry.....	765	Spikes.....	261
Schaeffer salt.....	47	Swivels, anchor.....	821
Schappe silks—		Screws:	
As spun silk.....	604	Commonly called wood screws.....	260, 261
Yarn.....	601-603	Bicycle.....	261
Schiffli laces.....	788	Scroll iron or steel.....	195, 196
Schmaschen gloves.....	812, 813	Coated with zinc, spelter, or other metal.....	197, 198, 199
Schedule tare.....	1667	Manufactures of, not specially provided	
Schnapps, Wolf's aromatic.....	445	for.....	219
Schools for teaching brewing.....	1084	Scrolls, made of bamboo.....	331
Schwarzbrod-zweibach.....	933	"Sculptor or statuary" defined.....	850
Scientific—		Sculpture:	
Apparatus.....	835, 1084, 1195, 1196	Casts of, for use as models.....	1121, 1126
For colleges.....	1084	Copies, replicas, or reproductions of.....	839
Instruments.....	1085, 1087	Definition of.....	841, 842, 850
Utensils.....	1083	Original or replicas, works of art.....	1194
Scissors.....	236, 237, 720	Specimens of.....	1126
Blades for.....	236, 237, 240	Work of art.....	841
Doll's.....	721	Sea grass.....	1056
Metal.....	1037	Furniture, baskets.....	833
Parts of.....	241	Manufactured or dyed.....	833
Steel.....	242	Seal oil.....	67
Surgical.....	241	Seals, Christmas.....	655
With paper sheaths.....	241	Sealing wax.....	821, 1218
Scotch or Brazilian pebble.....	955	Sealskin—	
Scout whistles, pen whistles.....	715	Coat, alteration of abroad.....	1158
Scouring bricks.....	130	Garments, prohibited importation.....	1693
Pumice stone.....	114	Imitation, for cloakings.....	629
Scow; not dutiable as merchandise.....	1652	Jackets, worn as manufactures of fur....	744
Scrap—		Velours, imitation of.....	571
Albums.....	675	Sealskins:	
Aluminum.....	263, 264	Dressed, commission on the raw skins..	1440
Brass.....	955	In natural shape, dressed and repaired..	744
Gas mantle.....	279	Prohibited importation.....	1693
Gunny, old.....	1103	Tanned, unsplit.....	1035
Iron.....	914, 918, 1522, 1523	Undressed.....	1449
Lead.....	278		

	Page.
Sea moss	833, 1056, 1057
Sea stores:	
Articles to be listed on manifest	1659
Defined	1660, 1661, 1663, 1665
Decision of collector as to excess final. 1662, 1664	
Excessive dutiable	1660, 1662, 1663
Not manifested, forfeited	1660
Ship stores, distinguished from	1662, 1664
Surplus not to be entered for warehousing	1664
Sea water, absorption of	341
Seaweed:	
Canned	371, 372, 373
Dried	1057
Manufactured or dyed	833
Seaweeds, crude	1055
Search warrant, abuse of	1462
Seed—	
Beans	366
Cane, for Department of Agriculture	1091
Kafir	872
Peas	382
Rice	362
Salted melon	868
Wheat	1163
Seedlings:	
Coniferous evergreen	1107
Deciduous and evergreen trees	386
Defined	1109
Fruit trees	386
Ornamental trees or shrubs	386
Orange trees	999
Pine and spruce	388
Seeds:	
All kinds not specifically provided for	389
Alligator pear	390
Anise	389
Aromatic—	
Drugs, advanced	54
Not garden drugs, crude	979
Asparagus	390, 392
Australian salt bush	393
Balm	393
Beet (except sugar beet)	389
Black tare, grass	1110
Brussels sprout	390
Cabbage	389
Canary	389, 392
Caraway	389
Cardamon	1107
Carrot	389
Castor beans	389
Cauliflower	1107
Celeriac	393
Celery	1107
Aromatic, drugs	982, 985
Chicory	393
Clover, grass	1110
Colchicum, drugs	985
Collard	389
Conium, drugs	985
Coriander	1107
Corn salad	389
Cotton	1107, 1110
Cumarin	1107
Dandelion	393
Date	392

	Page.
Seeds—Continued.	
Dill	391, 984
Eggplant	389
Fennel	1107
Fenugreek	1107
Flax or linseed	389
Flower	1107, 1109
Grass	1107, 1109
Hemp	1107
Hourhound	1107
Imported by Department of Agriculture	1091
Impurities in flax	390, 391, 392
Kale	389
Kohl-rabi	389
Larkspur	985
Lotus lily	390, 391
Lupin	1108
Mangel-wurzel	1107, 1110
Marjoram	391
Melon	391
Millet	1109, 1110
Hulled	874
Mushroom spawn	389, 392
Mustard	1107
No allowance for dirt or impurities in	389
Of morbid growth, drugs, crude	979
Oil, not specially provided for	389
Parsley	389, 391, 393, 984
Parsnip	389
Pepper	389, 393
Poppy	389
Pumpkin	392
Quince	981, 985
Radish	389
Rape	1107
Rejected by Department of Agriculture	1092
Rib-grass	1108
Rosemary	393
Rubber	393
Rutabaga	389
Sage	393
Sabadilla	985
Sainfoin, French grass	1110
Saint John's bread or bean	1107
Sesame	393
Seradella	1109
Shamrock	1108
Sorghum	1107
Spinach	389
Spurry	1108, 1109, 1110
Star anise	390
Stropanthi	985
Sugar beet	1107
Sugar cane for	1107
Tamarind	984
Thyme	393
Turnip	389
Vetch, grass	1109
Wormwood	393
Seger—	
Cones	130, 132
Kegel	132
Seine floats	257
Seines, flax, hemp, or ramie	532, 533
Seizure:	
Appraisement after	1278
Articles found in another customs district, custody	1739

Seizure—Continued.	Page.		Page.
Burden of proof, etc.	1739	Shantungs or Pongees, silks	622, 626
District of	1739	Shapes, steel	202, 203, 204, 205, 206
For undervaluation, proceeds of	1276	Shark fins as fish skinned and boned	401, 993, 994
Goods not manifested	1650	Sharpeners:	
Obscene articles	1544	Beet-knife	891
Of documents under search warrant	1462	Pencil	302
On vessels while proceeding to port of destination	1650	Shaving—	
Probable cause for	1263, 1737	Cream	102
Vehicles of innocent owner	1747	Mirrors	172
		Paper in pads	681
Seized goods:		Shavings:	
Appraised value less than \$25	1288	Paper stock	1075
Duty on	1264	Steel	208
Jurisdiction of Board of General Appraisers	1388, 1393	Shawl pins	285, 761
Reappraisement of	1279	Shawls:	
Value of	1285	Cotton and wool	498
Selenium and salts of	1102	Ice wool squares	582
Self-heating irons	230	In the piece	583
Selvaige of silk, cotton cloth	484	Knit cotton	497
Semiprecious stones, manufactures of not specially provided for	177, 178, 766	Wool	581, 583, 584
Semitropical and tropical fruit plants	999	Prayer	566
Semolina	1160, 1162	Worsted, embroidered with silk	802
Senegal gum	62	Sheaf loaders	893
Sensitized paper	643	Shearling sheepskins	1117
Separators, cream	958	Shears	236, 237
Separate parts, importation of	226	Blades for	236, 237
Seradella seed	1109	Defined	239
Serpentines, paper	681	Hedge	238
Serial stories	675, 1061, 1062	Machine, power-driven	301
Services of inspector at warehouse, salary paid by owner	1657	Pruning	891
Serums, derived from animals	905	Sheep	241, 242, 891
Sesame—		Sheathing:	
Or sesamum seed or bean oil	70	Copper	268, 269
Pulp	873	Felt, not adhesive	635
Seed	393	Paper	635
Ground	72	Worn-out metal	1560
Sesquicarbonate of soda	102, 103, 340	Sheep	908, 1134
Settlement test of sugars and molasses	340	Dip	46, 1111
Settees, Vienna bent-wood	333, 336	Intestines, sausage casings	934
Sewing—		Pastured in Mexico	918
Machine—		Shears	241, 242, 891
Heads	959	Straying across boundary	898, 908
"Hooks"	255	Sheepskin plates	742
Needles	252, 253, 255	Sheepskins:	
Parts	959	Alum tanned, with the wool on	1190
Machines	958	Dressed	743
Defined	255	As fur skins	742, 1000
Toy	716	Tanned and dressed	742
Silk	605	Undressed	1115
Sextants	166	With the wool on	1188, 1512
Shaddock boxes	320	Sheets:	
Shaddocks in boxes	418	Advanced in condition	264
Shade cards, samples	1557	Aluminum	263, 264
Shades:		Collodion	53
Bamboo, wood, straw, or compositions of wood	326, 787	Copper	268, 269, 270
Metal	252	Covered with metal	197
Shafting, mill	202, 203	Corrugated galvanized iron	205
Shafts:		Cotton	520
Crank	195	Defined	263
Generator	310	Drawnwork hem	521
Shamrocks, artificial	712, 717	Gelatin in	61
Shams made of cotton lace	800	Grass	694
Shanks, metal, silver plated	704	Illustration imported separately	1060
		Initialed or monogram embroidered	799
		Iron	193, 200
		Coated with zinc, spelter, or other metal	197, 198, 199
		Cold hammered, etc.	197, 198, 199, 200

Sheets—Continued.

	Page.
Iron or steel—	
Common or black.....	189, 190, 191, 192
Covered with nickel.....	201
Decorated in colors.....	197
Galvanized.....	197, 198, 199
Manufactures of, not specially provided for.....	219
Polished, etc.....	197, 198, 199, 200
German silver.....	266
Lead.....	278
Metal, coated with nickel, etc.....	197
Enameled or glazed.....	250
Nickel.....	282
Platinum.....	1092
Steel—	
Bessemer, etc., processes.....	202, 204
Molded.....	202, 203, 204
Open-hearth process.....	204
Straw.....	694
Tin.....	202
Typewritten.....	1042
Unbleached willow.....	695
Zinc—	
Coated with metal.....	198
Coated with paint.....	200
Enameled.....	200
Sheet-iron drums.....	232
Sheet music.....	947
Sheetings of flax or hemp.....	1218
Shell—	
Boxes.....	1218
Buttons.....	702, 707
Cameos.....	771, 773
Manufactures of.....	827
Shells:	
Cocoa.....	971
Cut and bored.....	829
Day and night.....	724
Empty cartridge.....	728
In their natural state.....	830, 1079, 1080
Or skeletons of starfish.....	1080
Ostrich egg.....	873
Oyster, ground.....	887
Pierced, unmanufactured.....	1079
Racing—	
Entry of under bond.....	1554
Not vessels.....	333
Snails or "green ears".....	831
Strung.....	830
Sold for ornaments.....	831
Tortoise.....	1079
Turtle.....	830
Shellfish.....	1113
Shellac:	
Granulated.....	1027
In rolls.....	57
Substitute.....	1027
Wax.....	1150
Shields, dress, chief value rubber.....	826
Shida baskets.....	328, 330
Shin bones.....	937
Shingle bolts, wood.....	1164
Shingles.....	1164, 1174
Ship—	
Materials.....	1557-1561
Planking.....	1164, 1168
Stores.....	1682, 1663
Timber.....	1164, 1168

Ships—

	Page.
Anchors.....	193, 1684
Chronometers.....	288
Equipment.....	1660-1665
Logs.....	1089
Wrought iron for.....	193
Shipment of smuggled goods.....	1643
Shipments to and from Philippine Islands.....	1530
Shipper, fraud of.....	1258, 1260, 1261
Shipper's charges not a proper subject of lien.....	1648
Shiratski as vermicelli.....	359
Shirt—	
Bosoms, cotton tucked.....	496
Collars and cuffs—	
Cotton.....	495
Linen.....	539
Labels.....	519
Shirts:	
Cotton—	
Knitted.....	509
With linen collars and cuffs.....	540
Embroidered with initials.....	797
Tennis, cotton.....	510
Wool and cotton.....	584
Shirtings, cotton and linen.....	488
Shirtwaist fronts and bands.....	499
Shooting gallery outfit.....	1100
Shoddy, wool.....	1192
Shoe—	
Buckles or slides.....	762
Buttons.....	702
Pearl.....	704
Hooks.....	884
Knives.....	243, 244
Lacings—	
Cotton or other vegetable fiber.....	511, 540
Leather.....	1028
Machinery.....	958
Machine needles.....	1059
Polish, white cream.....	29
Vamps.....	1038
Shoes—	
And boots, india-rubber.....	1218
Appliqued, chief value leather.....	1036
Chinese.....	1035, 1036, 1038
Chinese, part cotton.....	499
Horse, iron or steel.....	1058
Mule.....	1058
Ox.....	1058
Rawhide.....	872
Silk-embroidered.....	1036
Shooks:	
American-made, for fruit boxes.....	320-323
Made into box, not a manufacture.....	1578
Packing box, of wood.....	320
Produce of the forest of Maine.....	1220
Returned as boxes or barrels.....	907, 914
Sugar-box, of wood.....	320
Tongued and grooved.....	914
Shopping bags, fitted leather bags.....	809
Shortage:	
Allowance for.....	10, 11
Fruit and other perishable articles.....	1463-1479
And damage.....	1476
By theft.....	455
Burden of proof.....	10, 1465
Coal jettisoned not.....	11
Evidence of.....	8, 1465
Found by appraiser.....	1665

Shortage—Continued.	Page.	Silk—Continued.	Page.
Inspector's report of.....	10	Bags for opera glasses.....	1443
Loss of goods in bond.....	10	Bandings.....	611
Method of ascertaining weight of.....	10	Banners—	
Not noted by appraiser.....	1666	For benevolent societies.....	1128
Not part of entered value.....	1278	For presentation to a church.....	1204
Of bottles in cases.....	8	Painted.....	845
Of liquors.....	451	Belts.....	611
Of liquors in bottles or jugs.....	455	Beltings.....	611
Of vermouth in bottles.....	456	Berhampore and Kasi.....	622
Of wine.....	456	Bindings.....	611
Of wines and liquors.....	452	Boiled off.....	622
Of importation transported in bond.....	1666	Bolting cloth.....	936
Perishable articles.....	1463-1479	Bone casings.....	611
Shot.....	208	Box tops.....	620
Chains.....	313	Braces.....	611
Lead.....	278	Braid.....	785
Shotgun—		Candle shades.....	782
Barrels—		Chenille yarn.....	505, 606
Forged, bored, and welded together.....	248, 249	Chiffon.....	623, 799
In single tubes, forged, rough bored.....	1112	Ribbons.....	613
Trophy or prize.....	1046	Cloaking, imitation sealskin.....	629
Shotguns—		Cloth from waste.....	623
Advanced in value abroad.....	915	Clothing, ready-made.....	614-617
And rifles, combination.....	248, 249	Cocoons—	
Breech-loading.....	248, 249	And silk waste.....	1114
Muzzle-loading.....	248	Partially manufactured.....	601
Not household or personal effect.....	1158	Collar supporters.....	621
Parts for.....	247, 248, 249, 250	Combed.....	601
Separately packed.....	250	Comfortables, appliquéd.....	780
Show—		Cords—	
Cards:		And tassels.....	611
Iron.....	313	And yarns.....	606
Paper.....	679	Corset-laces.....	785
Pieces.....	716, 720	Cotton cloth, figured with.....	490, 491
Shovels, agricultural implements.....	892	Crapes.....	629
Shoyu, sauce.....	375, 376	Dress goods, in part wool.....	627
Shredders, beet.....	308	Dust or flock.....	628
Shrimp—		Edgings.....	798, 799
And other shellfish.....	1113	Embroidered candy boxes.....	792
Nets of flax.....	533	Fabrics—	
Paste.....	378	Count of threads in the warp.....	621
Shrinkage of cloth, cost of.....	1426	Printed, woven.....	625
Shropshire sheep.....	901	Veilings.....	784
Shrubs:		Woven.....	617-629
For the Department of Agriculture.....	1091	Flags.....	621
Nursery stock.....	386, 393	Floss.....	605
Siccatif.....	22	Flock.....	628
Sickles, agricultural implements.....	892	Galloons.....	797
Side arms.....	242, 249	Garments, fur-lined.....	746
Siding, novelty.....	1166	Garnitures.....	796
Sienna and sienna earths.....	90	Garters.....	611
Silex lining.....	997	Gauze.....	613, 628
Silica:		Girdles.....	628
Powdered.....	1130	Gloves.....	1122
Ware.....	131, 132	Goods—	
Silicic acid.....	888	Beaded, net, and tidies.....	690
Silico-spiegel.....	280	Pleated or shirred.....	625
Silicate of soda.....	1118	Habutal.....	622
Silk—		Handkerchiefs.....	610
And cotton cloth.....	490, 492, 629	Hatbands.....	611
And cotton mufflers.....	494	Hatters' plush.....	860, 861
And wool furniture.....	334	Hats, part wool.....	581, 599
And worsted dress goods.....	628	Hose.....	1122
And wool knit goods.....	617	Clocked.....	781
Artificial or imitation.....	629-633	In the gum.....	622, 1551
Manufactures of.....	629-633	Jewelry boxes.....	607
Yarns or filaments of.....	629	Knit goods.....	617

Silk—Continued.		Silk—Continued.	
	Page.		Page.
Knitted mufflers.....	610	Warp beams.....	1440
Laces.....	804	Warps, not on beams.....	605
Composed of silk and mohair.....	802	Waste.....	1114
Fans of.....	749	Artificial.....	469, 863
Flouncings.....	795	Wearing apparel.....	610, 616, 628, 789
Lamp shades.....	782	Webs.....	611
Lined—		Webbings.....	611
Baskets.....	328	Weight of.....	626, 1670, 1676
Paper boxes.....	644	Yarn—	
Manufactures of, not specially provided		On wooden spools.....	603, 1426
for.....	617-629	Schappe.....	603, 604
Medallions.....	796	Silk-striped—	
Mourning crapes.....	624, 780, 796	Cotton satins.....	493
Mousseline.....	799	Sleeve linings.....	489, 628
Mufflers.....	610	Silk-covered wire hat braid.....	628
Mull and tinsel gauze.....	625	Silk-warp henriettas.....	628
Muslin.....	799	Silk-wool dress goods.....	626
Mustache band.....	622	Silkworm eggs.....	1115
Net or nettings.....	795	Silver:	
Noils.....	601	Articles plated with.....	304, 306, 307
Organzine, warp ends.....	605	Bags.....	753
Ornaments.....	788, 796	Bars of.....	957
Partially manufactured.....	678	Bullion.....	956
Piece goods.....	1731	Bronze powder.....	268
Pile fabrics.....	606-609	Chlorides.....	99
Plushes.....	606-609	Coins.....	972
Push for making women's hats.....	609	Crosses, regalia.....	1122
Powdered.....	625	Dollars, as merchandise.....	1643
Raw—		German.....	266
Not advanced.....	1114	Hand bags.....	765
On caps or tubes.....	601	Japanese, yen.....	1623
Reeled.....	1551	Knives, forks, and spoons.....	953
Écru tram or tram.....	605	Leaf.....	270
Ribbons.....	611, 614, 1731	Manufactures of.....	304
Part cotton.....	517	Medals of.....	1046
Sashes.....	1127	Ore.....	1075
Schappe yarns.....	603, 604	Peseta, Spanish.....	1622
Screens, water paintings.....	628	Plated metal button shanks.....	704
Sewing.....	605	Prize cup.....	1047
Spun.....	601-603	Salts and compounds of.....	99
Wound on wooden beams.....	603,	Scent bottles not jewelry.....	765
	1426, 1428, 1440	Sweepings.....	1075
Squares, hand-painted.....	847	Wire.....	272
Strings for musical instruments.....	834	Silverware, antique.....	1209
Striped cotton.....	489, 493	Silur and silur paste.....	95
Suspenders.....	612	Similar—	
Swivel-figured.....	626	Description construed.....	578
Table covers.....	1208	Goods, undervaluation of.....	1297
Tassels.....	783	Similitude.....	876-885
Thrown.....	605	Agate to precious stones.....	884
Thread.....	605	Definition of.....	130
Tram.....	605	Sinalco seele.....	34
Trimmings.....	695	Singapore buffalo hides.....	1117
Tubings.....	611	Sink brooms.....	698
Tussah reeled.....	1114	Siphon bottles.....	140
Twist.....	605	Decorated.....	147
Vells.....	779, 804	Glass.....	150
Veilings.....	784, 798	Sirups:	
Made on Lever machine.....	789	Beet juice.....	338, 339, 340
Velvet.....	607, 1731	Cane juice.....	337, 338, 339, 340
Jewelry boxes.....	607	Fruit, not specially provided for.....	461
Selvages of.....	609	Sirup:	
Ribbons.....	609	Maple.....	344
Ribbons, weight of.....	1676	Proprietary.....	34
Vest chains.....	766	Rhamnus.....	56
Vestings.....	804	Sirop de Punch.....	36

	Page.		Page.
Sirop d'Orgeat.....	867	Sleeve linings, silk striped.....	499
Sisal—		Sliver:	
Grass, cables, and cordage.....	529	Cotton.....	467
Hammocks.....	556	Ramie.....	532
Skeletons.....	1115	Sliced deer horn.....	1017
Skelp, iron or steel.....	189, 190, 191, 192	Slides:	
Sketches:		Buckle, ornaments for slippers.....	765
Original works of art.....	1194	Magic lantern.....	164, 165, 722
Pen and ink, not specially provided for.....	839, 852	Microscope.....	149, 153, 155
Skewers, wood, butchers' or packers'.....	325	Microscopic, with specimens.....	151
Skewings, scraps of metal.....	955	Toy magic-lantern.....	713
Skins—		Slipper—	
And hides, distinguished.....	1035, 1116	Ornaments, slides, and buckles.....	765
Bird.....	729, 732	Patterns.....	501
Calf, long-haired.....	1116	Slippers—	
Cape, Angora.....	1118	And bag traveling sets, leather chief	
Chamois.....	804	value.....	807
Dog, undressed.....	1115	Chinese.....	826, 1035
Feathers and down on.....	729	Embroidered with metal threads.....	788
Fish.....	995	Leather chief value.....	878
For drumheads.....	836	Part wool.....	499, 878
For morocco.....	1029, 1036	Slubbing waste, wool.....	1192
Fur dressed on.....	740-747	Sludge—	
Fur seal.....	741	Acid.....	1010
Fur, undressed.....	999	Machines.....	958
Goat, undressed.....	1115	Smalts not specially provided for.....	94
Goatbeaters'.....	1004	Smelting of ores and crude metals.....	1570, 1571, 1573
Hare, undressed.....	1115	Smuggling.....	1738-1747
Lamb.....	1030	Articles in passengers' baggage.....	1606-1611
Mixed with hides.....	1116	Completion of offense, seizure within	
Rabbit, undressed.....	1115	customs lines.....	1610
Rabbit or cony, cut in small scraps.....	864	Evidence against master.....	1644
Raw, not specially provided for.....	1115, 1117	Evidence against vessel.....	1643
Reciprocity provision for.....	1512	Evidence circumstantial.....	1608
Sheep, undressed.....	1115	Evidence of seamen.....	1643
Snake.....	982	From United States to Porto Rico.....	1715
Wild bird, importation prohibited.....	729	Imported contrary to law.....	1744
With stuffed heads.....	746	Penalty falls on officer in command at	
Skirt binding.....	516	time.....	1644
Wool.....	584	Team used in.....	1747
Skivers:		Smuggled goods:	
Leather.....	1035	Ownership of.....	1747
Sheepskins.....	1117	Possession of.....	1643
Skiving machines and parts of.....	958	Shipment of.....	1643
Slabs:		Smelling salts.....	22
Iron.....	1021	Smelts, fresh or frozen.....	989, 993
Marble.....	174, 175	Smokers'—	
Onyx.....	174, 175	Articles.....	856, 857, 858
Sandstone.....	182	Table.....	859
Slate, for tables.....	184	Smoking opium.....	77, 78
Steel.....	202, 203, 204, 207	Forfeiture of.....	80
Made by Bessemer or similar process.....	1128	Unlawful importation of.....	80
Slack, coal.....	965	Snail shells or "green ears".....	831
Slag, basic.....	1008, 1010	Snails.....	869, 1217
Slate—		Live, in baskets.....	358
Books.....	669, 672, 675	Snakes, trained.....	1099
Chimney pieces.....	184	Snap fasteners.....	273
For pencils.....	184	On tape.....	274
Mantels.....	184	Snappers, paper.....	679
Manufactures of, not specially provided		Snowshoes—	
for.....	184	And moccasins.....	1217
Pencils.....	184, 853	Made of wood and rawhide.....	873
Roofing.....	184	Snuff and snuff flour.....	355
Slabs for tables.....	184	Soap:	
Slates.....	184	Bains's Savonneux.....	102
Sledges, blacksmiths'.....	223	Benzine.....	101
Sleeper steel bars.....	204	Carbolic.....	101

Soap—Continued.	Page.	Soda—Continued.	Page.
Castile.....	100, 102	Sulphid of.....	102, 103, 104
Weight of.....	1672	Sulphite of.....	102
Common olive.....	102	Sulphuricinate of, dried.....	102
Containing alcohol.....	101	Supercarbonate of.....	102, 103
Containing castor oil.....	70	Washing.....	104
Containing salts.....	101	Water.....	463
Crown harness.....	102	Sodium.....	263
Dried sulphuricinate of soda.....	102	Benzoate.....	24, 47
Fancy.....	101, 102, 735	Caffeine sulphonate.....	24
Imitating fruits.....	102	Carbonate.....	104
In boxes, tare on.....	1669	Fluosilicate.....	21
Lifebuoy.....	102	Cyanide.....	1094
Medicinal.....	100, 101	Perborate and chromate of.....	30
Not specially provided for.....	100	Salicylate powder.....	24
Pears's unscented.....	101	Sulphate of.....	103
Pencils.....	854	Sulphuret.....	24
Perfumed toilet.....	100	Solidonia fiber.....	867
Proper's saddle.....	102	Sole leather.....	1028
Powder.....	100	Soles, hemp.....	497
Saccharate.....	101	Solids contained in water-tight coverings.....	1430
Sapo Viridis.....	102	Soluble creosote.....	1112
Sapona Della Regina.....	102	Solvent naphtha.....	49
Scouring.....	101	Sorb apples.....	408
Shaving cream.....	102	Sorghum:	
Stocks.....	1007	Sugars from.....	338, 339
Tetrapol.....	101, 102	Seed.....	1107
Toilet.....	100	Soson-albumen.....	894
Tooth.....	84	Sounding-machine tubes, glass.....	144
Soapstone—		Sounds, fish prepared.....	62
Paper weights.....	131	Soup:	
Sawed.....	132	Maggi's.....	371
Socks, infant's, cotton.....	506	Stock in packages less than 2½ pounds... 37	
Sod oil.....	67	Sour—	
For dressing leather.....	68	Grass, marsh hay.....	380
Soda:		Orange juice.....	1038
Arsenate of.....	1118	Soutache braid.....	783, 801
Ash.....	1118	Souvenir—	
Calced.....	103	Albums, lithographic.....	661
Mixture.....	884	Postal cards.....	681
Pearl.....	103	Soy—	
Benzoate of.....	102	Beans.....	1064, 1119
Bicarbonate of.....	102, 103, 104	Sauces.....	375
Alkalies containing 50 per cent or more of.....	102	Soya—	
Bichromate of.....	102	Beans, cooked and salted.....	368
Borate of.....	102	Cake meal.....	1009
Crude, not specially provided for.... 954		Spades, agricultural implements.....	892
Carbonate of, crystal.....	102, 103	Spangles:	
Caustic.....	103, 104	All kinds.....	683
As insecticide.....	103	Gelatin—	
Chlorate of.....	102, 103	Articles composed in chief value of... 683	
Chromate of.....	103	Strung.....	690
Crystals.....	102, 103	Schlung.....	689
Cyanide of.....	1118	Spangled—	
Hydrate of.....	102, 103	Artificial flowers.....	738
Hypo sulphate of.....	102, 103, 104	Hat crowns.....	689
Monohydrate of.....	102, 103	Spanish—	
Naphthionate of.....	48	Brown.....	90
Naphthol.....	48	Cedar.....	317
Nitrate of.....	1118	Flies, siftings from.....	982
Nitrite of.....	102, 103, 104	Gold, Cuban invoice.....	1621
Phosphate of.....	102	Grass.....	1076
Prussiate of, yellow.....	102, 103, 104	Libra, weight of.....	1676
Sal.....	102, 103	Publications.....	1738
Sesquicarbonate of.....	103	Red peppers.....	371
Silicate of.....	1118	Silver peseta.....	1622
Sulphate of.....	1118	Spanners.....	304
Crystallized.....	102, 103		

Spar:	Page.	Spirits—Continued.	Page.
Manufacturers of, not specially provided for.....	178	Product of Great Britain and Ireland, countervailing duty.....	1534
Ornaments.....	178	Proof and gauge of.....	441
Statuary.....	178	Proprietary.....	34
Spark plug insulators, porcelain.....	124	Spirituous beverages, not specially provided for.....	443
Spark plugs:		Splash mats, wood.....	329, 330
Enameled.....	125	Splasher mats with pockets, painted.....	852
Lava.....	126	Splice bars, railway.....	197
Mellite.....	126	Split—	
Rajah, porcelain.....	125	Lentils.....	371
Porcelain.....	124	Pearls.....	773
Printed.....	124	Peas.....	381, 1534
Sparklets or sparklers.....	724	Willow.....	1178
Sparters.....	1217	Splits or grains, sheepskins.....	1117
For baskets.....	325	Sponges:	
Sparkling wines.....	447	Advanced in value.....	104
Spear-back gloves.....	816	Bleached.....	104
Spearmint lozenges, confections.....	347	Products of American fisheries.....	104
Special—		Manufactures of.....	104
Apparatus for teaching the blind.....	943	Rubber.....	825
Discounts.....	1448	Trimmed or untrimmed.....	104
Hearings.....	1390	Waste.....	865
Specific duties:		Spool thread of cotton.....	469, 471
Goods subject to.....	1317	Spools containing spun yarn.....	1427
Regulated by value, additional duty....	1287,	Spoons, aluminum.....	250
	1288, 1291	Sporting—	
Specimens:		Rifles.....	247
Botanical.....	1119	Shotguns.....	248, 249
For educational institutions.....	1199	Spotted gum, lumber.....	1169
Of natural history on microscopic slides.....	1119	Spouts, stamped from steel sheets.....	206
Of Sculpture.....	1126	Sprats.....	395, 398
Speckled trout.....	993	And sardelles.....	404
Spectacle lenses.....	152, 164, 1091	In oil.....	403
Spectacles.....	161, 162, 1002	Sprays, artificial flowers.....	735
Frames for.....	161, 162, 163	Sprigs, cut iron or steel.....	1058
Sperm oil.....	67	Sprinkler tops.....	295
Spermaceti.....	1065	Sprocket chains.....	231
Spices.....	435, 436	Spruce—	
Spiegel, silico.....	280	Clapboards.....	1165
Spiegeleisen.....	1021	Gum.....	983
Spike—		Not a drug.....	55
Hammers.....	223	Logs.....	1165
Lavender oil.....	74	Molding.....	1166
Spikes:		Piling.....	1171
Cut, iron or steel.....	1058	Pine.....	1173
For construction of vessels.....	1558	Seedlings.....	388
Running.....	312	Sprudel water.....	466
Screw.....	261	Spun—	
Spinach seed.....	389	Glass.....	151
Spindle banding.....	516	Silk.....	601-602
Cotton.....	511	On beams a single entity.....	1426
Driving rope.....	518	On cops.....	604
Spinning gears.....	228	Yarn—	
Spiræa plants.....	383	Number of.....	604
Spirit—		On spools.....	603
Sensitizer.....	36	On tubes.....	604
Varnishes.....	92	Spunk.....	1120
Spirits:		Spurs used in the manufacture of earthen-ware.....	1120
Allowance for breakage or leakage....	448, 449	Spurry seed, giant.....	1108, 1109, 1110
British proof quantity.....	1534	Spyglasses, objective.....	1088
Distilled, compounds or preparations of.....	443	Square iron.....	186, 187
Domestic, used in the manufacture of articles for export.....	1569	Squares, aluminum.....	263
Fruits in reciprocity rate.....	411	Squeezers.....	299
Imitations, rate on.....	445	Squirrel skins sewed together.....	744, 746
Of nitrous ether.....	57	St. Gall embroideries, appraisement of.....	1317
Of turpentine.....	1148		

	Page.		Page.
St. John's bread.....	1110	Statuary—Continued.	
St. Leon wine.....	455	Metal.....	850
Stages for microscopes.....	167	Original professional production of sculp- tor.....	1194, 1195
Stags' heads.....	1120	Plaster of Paris busts not free as.....	831
Stained glass.....	169	Reciprocity, provision for.....	1510
Or painted window glass.....	1199	Spar.....	178
Windows.....	168, 1200, 1204	Unaccompanied by certificates.....	850
For churches.....	1204	With bronze pedestal.....	851
Stains, not specially provided for.....	94	Wooden.....	851
Stair treads.....	333	Church.....	1126
Stamp—		Statues—	
Cases, jewelry.....	752	For religious order.....	1127
Tax on cigars.....	356, 1443	Not tools of trade.....	1101
Stamped envelopes, postage stamps.....	1120	Stoneware.....	119
Stampings—		Imported for a club.....	1199
Of metal, for use in manufacture of jew- elry.....	753	Statuettes:	
Steel.....	207	Alabaster.....	180
Stamps:		Bisque.....	122, 123
Canceled.....	1120	China.....	122, 123
Foreign postage or revenue.....	1120	Cement.....	119
Internal-revenue, English.....	1650, 1655	Gold, bronze, and ivory.....	846
Standard coin currency, value of, estimated by Director of Mint.....	1617, 1716	Stoneware.....	119, 120
Standards, tintometer.....	145	Terra-cotta.....	122
Staphisacra seeds.....	985	Status of an American woman married to a foreigner.....	1080
Staphylococcus vaccine.....	905	Statute of limitations:	
Staples, wire.....	1058	Institution of forfeiture proceedings.....	1262, 1742
Star anise seed.....	390	Reliquidation of entries.....	1479-1490
Starch:		Statutes:	
All other.....	434	Constitutionality of.....	1716
Arrowroot as.....	434	Construction of, classification.....	1717
Burnt.....	63, 64	Construction of forfeiture provisions.....	1608
Butter-culture starters.....	434	Inconsistent with treaties.....	1224
Farina and potato.....	434	Meaning of.....	1728
Fiber.....	875	Repeal of.....	1733
"Fit for use as starch" defined.....	435	Revising prior acts on same subject mat- ter.....	1735
Made from potatoes.....	434, 435	Stave bolts, wood.....	1164
Rice.....	434	Staves.....	1164, 1171, 1174
Soluble or chemically treated.....	63, 64	"Gross thousand".....	1173
Soluble potato.....	64	Stay—	
Tapioca.....	1140	Bolts.....	225
Stars, gold, silver, etc.....	271	Laces.....	557
State board of health, an educational institu- tion.....	1086	Stays, iron or steel.....	231, 232
States:		Steam—	
Not to levy import or export duty.....	13	Dredge.....	922
Taxing power of.....	13	Engine, locomotive.....	303
Static wreaths.....	734	Engines, forgings for.....	193
Stations of the cross.....	1204	Plow—	
Statuary:		Equipments.....	893
Alabaster.....	178	Machinery.....	893
And casts of sculpture for models.....	1121	Trawls.....	1559
And copies, replicas, or reproductions of.....	839	Winches.....	1660
Bronze.....	840, 842, 843, 1515	Steamer rugs, woolen.....	573
Carved metal mug not free as.....	851	Steamship, not imported merchandise.....	1652
Cast-iron.....	228, 843	Steamships, models of.....	1053
Cast-metal.....	849	Stearin.....	16
Copies of.....	853	Oleo.....	1073
For athletic club.....	1125	Statite.....	104
For religious purposes.....	1122	Steel—	
For use of educational institutions.....	1122	Alloys.....	202
Imported for exhibition by associations.....	1196	Used as substitutes for.....	202, 203, 204
In pieces, carved cistery.....	851	Used in manufacturing of, not spe- cially provided for.....	185
Italian reciprocity agreement.....	1519	Balls as forgings.....	194
Marble, metal, and ivory.....	849	Band.....	196

Steel—Continued.	Page.	Steel—Continued.	Page.
Bands.....	195, 196, 204	Plates—Continued.	
Band saws.....	196, 260	Circular.....	192
Crucible.....	204	Engraved, for manufacture of plate glass.....	257, 258
Bars.....	202, 203, 204, 205	Engraved, for printing.....	257, 258
Beams—		Engraved, for printing bonds, stocks, etc.....	1128
Bulb.....	189	Engravers'.....	205, 206
Deck.....	189	Floor.....	206
Billets—		Molded.....	202, 203, 204
Containing alloys.....	202, 203, 204, 207	Sheared.....	205
Not containing alloys.....	1128	Points.....	259
Blanks—		Rails—	
Containing alloys.....	202, 203, 204	Broken, as scrap steel.....	1025
Not containing alloys.....	1128	Crop ends.....	1025
Blooms—		Defective.....	1103
Containing alloys.....	202, 203, 204	Old.....	1024, 1103
Not containing alloys.....	1128	Razor, cold rolled.....	200
Bodkins.....	258	Rods—	
Boiler flues.....	235	For building ships.....	1558
Boxes.....	907, 908	Polished.....	210, 211
Brush ink erasers.....	700	Wire, rolled.....	202
Castings—		Rivets.....	259
Bessemer, etc., processes.....	202	Sashes, window.....	189
Molded.....	202, 203, 204	Saw plates, circular.....	190, 191
Cold rolled.....	214, 217	Scissors.....	242
Connecting rods.....	203, 204	Scrap.....	1021, 1024
Cotton ties.....	1016	Ingots manufactured from.....	204
Crank pins.....	203, 204	Shafting.....	203, 204
Crop ends of Bessemer rails.....	207	Shafts, crank.....	203, 204
Crucible, etc., processes.....	202	Shapes.....	202, 203, 204, 206, 258
Plate.....	189	Coated with insulating material.....	206
Diamond.....	209	Pressed.....	204
Die blocks—		Pressed, temporarily tinned.....	205
Containing alloys.....	202, 203, 204	Stamped.....	206
Not containing alloys.....	1128	Shavings.....	208
Engraved forms for printing bonds.....	1128	Sheets.....	204
File wheels.....	303	Bessemer, etc., processes.....	202
Files, circular.....	891	Crucible.....	192
Flat pieces, not wire rods.....	211	Molded.....	202, 203, 204
Forgings, finished.....	195	Open-hearth process.....	204
Frames, window.....	189	Slabs.....	202, 203, 204, 207
Hair clippers not machine tools.....	299	Spikes.....	1058
Hoop.....	196, 204	Stampings.....	207
Or band.....	1016	For millinery ornaments.....	205
Horseshoe nail plates.....	1059	Strips.....	193, 196, 201, 204, 207, 211, 217, 218
Ignition tubes.....	236	Cold rolled.....	200, 201
In bundles.....	1669	Nickel-plated, in coils.....	200
In coils.....	217	Polished.....	200, 201
Ingots—		Swaged.....	202, 203, 204
Cogged.....	202, 203, 204, 1128	Taggers.....	192
Containing alloys.....	202, 203, 204, 1128	Trousers buttons.....	273
Not containing alloys.....	1128	Tubes.....	235
Knives.....	204	For holding gas.....	235
Larding needles.....	255	Umbrella rods.....	261
Manufactures of, forgings.....	195	Ware, enameled.....	251
Metal produced from iron or its ores, cast and malleable, classed as.....	220	Watch chains.....	720, 766
Not specially provided for.....	202, 203, 204, 243, 244	Window frames and sashes.....	189
Pattern rolls.....	258	Wire rods, rolled.....	202
Picks.....	223	Wool.....	208
Pins—		Wrist pins.....	203, 204
Crank.....	203, 204	Steels:	
Wrist.....	203, 204	Corset.....	212
Piston rods.....	194, 203, 204	Cutlery.....	243
Plates.....	204	Dress.....	212, 218
Band saw.....	192	Steinholzmasse.....	873
Bessemer, etc., processes.....	202		

Steins:	Page.	Stone—Continued.	Page.
China, bisque, or parian	122	Lanterns	181, 182
Stoneware	119	Lava	180, 181, 182, 183
With metal tops	308	For pulp machines	183
Stem glassware	169	Lime	180, 181, 1129
Stems:		Lithographic plates	257, 258
Artificial	729	Monumental	180
Clove	435	Mortars	183
Drugs—		Mosaic cubes of	175
Advanced	54	Not specially provided for	180, 181, 1051, 1129
Crude	979	Pumice	114
Ornamental	729	Filed or rolled	114
Tobacco	1148	Manufactures of	114
Stereopticon or magic-lantern slides	1091	Powdered	114
Stereopticons	1090, 1091	Scouring bricks of	114
Stereoscopes	167	Trimmed	114
Stereoscopic photographic views on glass	172, 173	Rotten	1129
Stereotype—		Sand	180, 181, 1129
Metal	1149	Sweepings	1050
Paper	639	Temple	842
Plates	257, 258	Tripoli	1129
Broken	288, 1149	Stones:	
Stibnite containing antimony	896	Agate, glazing	178
Sticks—		Cabinet, unmounted	890
For umbrellas, parasols, and sunshades	861	For crushing colors	183
For walking canes	863	Glazing	129
Joss	1026	Hauteville	175
Manicure	334	Jet	172
Orange-wood	867	Lithographic	1040
Rattan, for whip handles	335	Paving, granite	183
Used as fan handles	334	Polishing—	
Stillwines	448	And burnishing	1217
Stilts used in the manufacture of earthenware	1120	Flint	131
Stink balls	716	Tam O'Shanter	131
Stipites Pyrethri	984	Precious, imitation	170, 172
Stipulations of fact and of law, effect of	1500	Rough unmanufactured	957
Stock—		Semiprecious, manufactures of, not specially provided for	177, 178
Filter	635	Stoneware	118, 120
Glue	1014	And metal exhausters	121
Greenhouse or nursery	386	Articles in part of	118
Paper, crude	1075	Charms	119, 120
Reel	335	Clock cases	119, 120
Stockings:		Common	119
Bishop's	1125	Salt-glazed	117
Cotton	504, 505	Containers	1431
Elastic	508	Crucibles	117
Wool	509, 563	Cups	119
And cotton	584	Decorated	119
Stocks for guns	248, 249	Ink bottles, not coverings	1430
Stolen goods, forfeiture of	1742, 1743	Lamps	119
Stone—		Mugs	119
And sand	1129	Ornaments	119, 120
Ballast, value on entry of	1349	Pill tiles	119
Bottles, coverings	1432	Plaques	119, 120
Building	180	Statues	119
Travertine	183	Statuettes	119, 120
Burr	1129	Steins	119
Chiampo	174	Tea sets, toy	120
Cliff	1129	Toys	119, 120
Cornish	1050	Vases	119, 120
Ground	133	Stoppage in transitu	1230
Cornwall, ground	129	Stoppers:	
Crushed	128, 1050	Cork, manufactured	708
Free	180, 181, 1129	Glass, bottle	137
Granite	180, 181, 1129	Porcelain, bottle	125
Istrian	176		

Storage:	Page.	Strings:	Page.
Batteries, electric.....	1087	Catgut.....	819
Entry without invoice.....	1459, 1461	For musical instruments.....	820, 818
Excessive.....	1638	Composed wholly or in part of steel.....	834
Packed packages.....	1459	Silk.....	884
Merchandise remaining on vessel.....	1461	Striped, cotton cloth as colored.....	482
Pending production of quadruplicate invoice.....	1689	Strips:	
Pending reappraisement.....	1657	Aluminum.....	263
Stories, serial.....	1061, 1062	Copper.....	268, 269
Stout in bottles or jugs.....	458	Glass.....	163, 170
Stove—		Horn.....	824
Plates, cast-iron.....	226, 227	Polished and drilled.....	822
Polish.....	30	Iron or steel—	
Wicking, cotton.....	511	Coated with zinc, spelter, or other metal.....	197, 198, 199
Stranded vessel.....	1645	Galvanized.....	197, 198, 199
Stranky potsaver, cleaning cloths.....	272	Not specially provided for.....	189
Strassburgerbitters.....	445	Leather.....	806
Straw.....	393, 394	Leghorn.....	694
And hay prohibited importation.....	1693	Of card clothing with metal end plates.....	225
Baskets—		Of cotton cloth, coated.....	513, 514
Cotton covered.....	327-329	Nickel.....	282
For liquor in bottles.....	1441	Plush.....	797
Wood-lined.....	329	Steel.....	193, 195, 196, 201, 204, 207, 211, 212, 213
Blinds.....	326	Nickel-plated, in coils.....	200
Braid.....	693	Polished.....	200, 201
Containing cotton thread.....	695	Whalebone.....	826
Or plaits for hats.....	695	Strontia.....	1131
Coverings of bottled merchandise.....	1439	Stropanthi seed.....	985
Covers containing empty bottles.....	1429	Structural—	
Curtains.....	326	Iron.....	189
Defined.....	693	Shapes—	
Flax.....	996	Alloy steel.....	189
Hats.....	1455	Iron or steel.....	188
Trimmed.....	694	Strung—	
Hoods.....	693	Beads—	
Lace containing cotton thread.....	696	Glass, metallined, metal chief value..	691
Manufactures of, not specially provided for.....	821	Metal or glass, temporarily strung....	690
Mats sewn with cotton.....	534	Necklaces composed of beads strung on brass chains.....	687
Matting.....	533	Shells.....	830
Paintings.....	823	Strychnia or strychnine.....	1131
Not free as paper stock.....	394	Stud bolts.....	225
Plaits.....	694	Studs:	
Pulp, bleached.....	1182	Automobile tire.....	259
Rugs.....	534	Bone, ivory, mother-of-pearl or agate.....	702, 703
Rye.....	868	Machined or brightened.....	259
Screens.....	326	Stuffed—	
Sewing machine.....	959	Birds, not suitable for millinery ornaments.....	735
Sewing machines for trade school.....	1083	Chicks, mounted.....	734
Shades.....	326	Ducklings.....	731
Sheets.....	694	Sturgeon.....	993
Split—		Spine.....	62
And twisted for hat braids.....	876	Stylographic pens.....	284
Hat trimmings.....	823	Stypagragrass:	
Strawboard.....	635, 666, 668	Dried and preserved.....	732, 1005
Straws:		In natural condition.....	1005
Drinking.....	823, 868	Subacetate of copper.....	935
Julap.....	875	Suberit, artificial cork or cork substitute.....	709
Strawberry—		Sublimation of sulphur.....	1132
Juice.....	463	Subnitrate of bismuth.....	100
Pulp.....	413	Subpoena duces tecum.....	1323
Street-organ covers, wool felt.....	567	Substitute platinum wire.....	215
Streptococcus vaccine.....	905, 906	Substitutes:	
Streuperlen frosting.....	97	Butter.....	365
String beans.....	366	Cheese.....	365
In brine.....	368, 374	Cork.....	708

Substitution of—		Page.	Sulphate—Continued.		Page.
Copies in place of lost protests.....		1390	Magnesia.....		66, 887
Records on hearing before the board.....		1324	Morphia.....		77
Sugar:			Potash.....		1011, 1094
Additional duty on.....		343	Quinia.....		1101
Appraisement by sample.....		1357	Soda.....		1118
Bags—			Crystallized.....		102, 103
Jute.....		546	Sodium.....		103
Secondhand.....		863	Zinc.....		94
Tare of.....		1669	Sulphide of—		
Beet, above No. 16 Dutch standard.....		341	Antimony.....		265, 266, 896
Beets.....		367	Arsenic.....		907
Candy and confections.....		345, 346	Cadmium.....		96
Cane.....		338, 339, 340	Soda, concentrated.....		103
For seed.....		1107	Zinc.....		93
In tins.....		345	Sulphite of soda.....		102-104
Bounties by foreign countries.....		1535-1539	Sulphoichthynat.....		1066
Bounty by United States.....		339, 343	Sulphorcinoleate of soda, dried.....		102
Box shooks, empty.....		320	Sulphorcinoleic acid.....		70
Brown, colored.....		342	Sulphur—		
Coated nuts.....		348	In any form.....		1131, 1132, 1133
Countervailing duty on.....		1535-1539	Ore.....		1131
Crushed loaf.....		344	Refined.....		1133
Cuban, reciprocity rate on.....		1522, 1525	Wicks.....		873
Discolored.....		338	Sulphuret of—		
Drainage allowance for.....		1676	Antimony.....		266
Drainings.....		338, 342, 344	Iron.....		1131
Drawback on.....		1579, 1580	Sulphuric—		
From sorghum.....		338, 339	Acid.....		888
From the Philippines.....		1526	Ethers.....		57
Grape.....		344	Sumac:		
Invoiced on polariscopic test.....		1292	Extracts and decoctions of.....		58
Loaf, crushed.....		344	Ground or unground.....		1133
Machinery for manufacturing.....		892	Sumatra tobacco.....		351
Maple.....		344	Sunday—		
Market value of.....		1354	Closing of customhouse.....		1595
Of milk.....		1047	Included in computing time for acts to be done.....		1372, 1383, 1418, 1635
Reciprocity, provision for.....		1512	Sunflower seed.....		1109
Refined.....		344	Sunn.....		1004
Regulations, validity of.....		343	Cables and cordage.....		529
Reimported, duty equal to drawback allowed.....		915	Or raffia.....		1006
Retests of.....		341	Sunshades:		
Sweepings.....		338, 342	Covered with material other than paper.....		861
Tests.....		341, 342	Frames for.....		261
Tinctured.....		343	Supercalendered and embossed grease-proof paper.....		648
Undervaluation of conditional invoice.....		1285	Supercarbonate of soda.....		102, 103
Value of, increased by drainage.....		343	Supercarded yarn.....		469
Wafers.....		363	Super cedar cabinet wood.....		316
Sugars.....		337-344	Supplements to periodicals.....		1060, 1061
Suit—			Supplies for vessels of the United States, withdrawal from warehouse.....		1227
Against collector.....		1490, 1710	Suppression of documents.....		1256
For duties.....		1700	Sureties on warehouse bonds, liability of.....		1657
On bond.....		1684	Surface-coated papers.....		652, 645, 1078
Under repealed act.....		1736	Decorated.....		646
Sulfothyol.....		1065	Lithographically printed.....		656
Sulfural.....		36	Surgeons' silk, twisted.....		606
Sulphanilic acid.....		48	Surgical—		
Sulphate—			Bandages.....		512
Alumina.....		24	Implements.....		239
Ammonia.....		896	Instruments.....		303, 1086, 1153
Barium.....		87	For hospitals.....		1085
Baryta.....		87	Needles.....		255
Copper.....		935	Scissors.....		241
Iron or copperas.....		975	Surplises:		
Lime, artificial.....		87	Imported by an individual.....		1127
Undressed blocks.....		114	Regalia.....		1122
Unground.....		112			

Surveying—	Page.	Table—Continued.	Page.
Aneroids.....	1089, 1090	Covers—Continued.	
Instruments.....	167	Jacquard figured.....	503
Surveyors' compasses.....	168	Jute and metal.....	557
Suspenders:		Pile fabric.....	589
Cotton.....	510, 516	Silk.....	1208
Silk.....	611	Turkey-red damask.....	520
Wool.....	584	Velvet.....	1208
Swaged steel.....	202, 203, 204	Velvet Jacquard figured.....	503
Swans.....	932	Union damask, cotton, chief value... ..	520
Sweatbands of cotton, wearing apparel.....	498	Damask—	
Sweaters, cotton knitted.....	509	Articles made from.....	520
Swedish—		Cotton.....	519
Coins.....	972	Union.....	553
Iron rods, bundles, or coils.....	*210	Knives.....	213, 244
Sweepings—		Mirrors.....	160, 168
From shoe factories.....	1010	Runners, damask.....	520
Gold and silver.....	1075	Smokers'.....	859
Of unladen cargoes.....	1649	Utensils.....	250
Sugar.....	338	Aluminum.....	250
Sweet—		Tables.....	844
Potatoes.....	1096	Sewing machines, power transmitting... ..	958
Red peppers.....	373	Ornamented with bronze or china.....	336
Sweetened biscuit.....	363, 364	Slate slab for.....	184
Sweetmeats.....	404, 405, 873	Tablet paper.....	661
Figs, baked and stuffed.....	407	Tablets:	
Ginger—		Acetosalicitylate.....	34
Stem and cargo.....	412	Braille.....	943
Preserved.....	412	Pepsin, confectionery.....	347
Halaw yas.....	412	Tackle, fishing.....	256
Jams as.....	413	Tacks:	
Marmalade as.....	413	Cut.....	1058
Swine, wild boars as.....	1134	Thumb.....	1059
Swiss—		Tagal—	
Chard seed.....	391	Hats.....	697
Treaty, favored nation clause.....	1516	Thread.....	553
Swisses, dotted or figured.....	487, 798	Taggers—	
Swivels, watch-guard, plated.....	313	Iron or steel.....	192
Sword—		Tin.....	197, 198, 199, 200
Bayonets.....	243	Tagua nuts.....	1134
Blades.....	242	Cut into slabs.....	34
Canes.....	242	Tailor's—	
Swords.....	242	Chalk.....	32
Bone.....	242, 243	Irons.....	226, 227
Coin.....	309	Taitempura, fish skinned, boned, and cooked	401
Theatrical.....	243	Talc:	
Sycamore lumber.....	1164, 1173	Cubes.....	106
Symphoral.....	24	French.....	106
Synthetic—		Ground.....	104, 105
Alizarin.....	894	Ruby.....	117
Camphor.....	64	Sawed.....	105
Precious stones.....	766	Tailor's.....	106
Syringes:		Talcum:	
Chief value hard rubber.....	823	Crude, unground.....	1134
Glass.....	145	Ground.....	104
Hypodermic, tubes for.....	235	Powder.....	105
Rubber flower.....	823	Scented.....	82
T.		Talles, unfinished, manufactures of wool.....	566
T-rails.....	1103	Tallow.....	1073, 1135
T. T. iron or steel.....	188	Bone.....	69
Table—		Chinese vegetable.....	1135
Covers—		Preparation.....	873
Cotton and metal.....	528	Vegetable.....	1006, 1007
Cotton chenille.....	502	Tamarind seed.....	984
Cotton fringed.....	503	Tamarinds.....	1136
Cotton, in the piece.....	481	Tambooured—	
In the piece.....	524	Articles.....	784
		Curtains and pillow shams.....	802

	Page.		Page.
Tam O'Shanter stones for polishing.....	131	Tare, actual list of—Continued.	
Tampico fiber.....	1004	Impurities usually present, not.....	1668
Cables and cordage.....	529	Invoice, when allowed.....	1667, 1668, 1670
Dressed, dyed, or combed.....	558	On hides.....	1668
Tangerines.....	418	Schedule and actual.....	1667
Tank bottoms, sugar.....	337, 338, 340	Seed.....	1110
Takenoko—Daikon vegetables.....	370	Taro flour from Hawaiian Islands.....	1522
Tanks:		Tarred jute threads or strings.....	863
Cylindrical or tubular.....	233	Tartar:	
Gasoline.....	911	Brown.....	26
Iron or steel.....	231	Cream of.....	25
Term defined.....	234	Crude.....	25, 1510
Tanned unsplit sealskins.....	1035	Tartaric acid.....	15
Tanners' knives.....	243, 244	Tartrate of soda.....	25
Tannic acid.....	15	Tassels:	
Tannin.....	15	Artificial horsehair.....	629
Powder, Kellar's.....	16	Artificial silk.....	629
Tanning—		Cotton.....	510
Extract.....	1138	Gold, silver, etc.....	271
Materials.....	1136	Silk as trimmings.....	783
Tantalum.....	185	Taxing power of States.....	10
Tantalus sets.....	150	Tea:	
Tap cinder.....	873	Act of June 30, 1864.....	1599
Tape:		Act of March 2, 1897.....	1141
Advertising.....	524, 525	Board.....	1144
Cotton.....	518, 541	Caddies, unusual coverings.....	1435
Insulating.....	525	Canisters, usual coverings.....	1434
Measures—		Condemnation act, constitutionality of.....	1144, 1716
Cotton.....	527	Containers, when dutiable.....	1145
In metal cases.....	313	Coverings, immediate.....	1429
Pocket.....	762	Dust, jurisdiction of board limited to standards.....	1398
Needles.....	252, 253	Duty on.....	1145
Bone.....	253	Examination of imported.....	1143
Tapers.....	725	Impure, for manufacturing.....	30
Night lights.....	727	Not specially provided for.....	1141, 1142, 1143
Tapes:		Plants.....	1141
Bridle.....	517	Prohibited.....	1144
Cotton braided.....	519	Reciprocity provision for.....	1511, 1512
Flax for measuring.....	537	Rejection of.....	1378
Flax, hemp, or ramie.....	540	Rusks.....	933
Ladder.....	515	Sets—	
Linen and silver flax.....	542, 556, 557	Toy—	
Paper-measuring.....	672	China.....	123
Tapestries:		Stoneware.....	120
Countable cotton.....	504	Siftings or sweepings for manufacturing.....	30, 31
Part pile fabric.....	609	Sweepings, denatured.....	31
Upholstering, silk chief value.....	609	Test for color.....	1144
Tapestry:		Waste.....	30
Antique.....	1208	Teapots:	
Brussels—		Earthenware, coverings.....	1432
Carpet.....	586, 587	Indian black.....	122
Rugs.....	591	Iron.....	229
Covered furniture.....	332	Stamped from steel sheets.....	206
Embroidery.....	783	Tea-seed oil.....	71
Tapioca.....	1140	Teak wood.....	1171
Flour.....	1141	Teams:	
Starch.....	1140	Entry of, under bond for exhibition.....	1554
Tar:		Of emigrants.....	902, 903, 904, 1157
Coal.....	969	Teaseled, cattle hair cloth.....	565
Of wood.....	1141	Teazels.....	394
Oil.....	970	Teeth:	
Spreading machines.....	958	Artificial.....	131
Taraxacum, extract of.....	56	Hippopotamus.....	829
Tare:		Manufactured.....	1218
Actual test of.....	1671	Natural or unmanufactured.....	1146
And "draft" defined.....	1666, 1667		
How obtained.....	1667		

	Page.		Page.
Telegraph—		Tetrachloride:	
Cable.....	218, 828	Carbon.....	40
Codes.....	940	Of tin.....	100
Poles.....	319	Textbooks.....	943
Wire.....	212	Textile—	
Telephone—		Grasses.....	1004
Poles.....	319	Machinery parts.....	229
Wire.....	212	Theatrical—	
Telescopes.....	167	Costumes.....	1098, 1099, 1100
Astronomical.....	1091	Effects under bond.....	1097, 1393
Scientific instruments.....	1088, 1090, 1091	Grease paint.....	81, 82, 97
Single-barreled.....	1091	Swords.....	243
Tempering powder.....	869	Theft of imported goods:	
Templets.....	311	Allowance for shortage.....	1666
Ten-day limitation for I. T. shipments.....	1689	In bond.....	1659
Tender—		Liquor.....	451
Of duties to deputy collector.....	1700	Nonimportation.....	455
Of protest fee, waiver of.....	1361	Not a casualty.....	1615
Tendons:		Thermit.....	281
Animal, not specially provided for.....	933	Invoiced as ferromanganese.....	279
Kangaroo.....	935	Thermometers.....	150
Tennis—		Clinical.....	143
Balls—		Etched.....	148, 171
Covered with rubber.....	571	Glass, cut.....	147, 150
Rubber, chief value.....	569, 824	Maximum and minimum.....	1087
Wool chief value.....	825	Thermo jars.....	145
Gut.....	961	Thermos bottles.....	145
Jackets, part wool.....	498	Thermoscopes.....	119
Nets, Russian hemp.....	533	Thibet—	
Shirts, cotton.....	510	Cloth or coatings.....	578
Tentative liquidations.....	1383, 1392	Furs.....	746, 747
Terne plates.....	197, 198, 199, 200	Thimbles, silver-plated.....	313
Manufactures of, not specially provided for.....	219	Thon Kegel.....	132
Terpin hydrate.....	39, 40	Thorite.....	279
Terra alba.....	1146	Thorium—	
Terra-cotta—		Nitrate, concentrated solution of.....	282
Baptismal fonts and pedestals.....	1126	Oxide and salts of.....	279, 281
Cases.....	122	Manufactured in Canada, discrimi- nating duty.....	1550
Jars.....	122	Thrashing machine.....	890
Medallions.....	122	Thread:	
Statuettes.....	122	Cotton.....	467
Vases.....	122	Count—	
Ware, plain.....	122	Average.....	488, 489
Work of art in.....	1197	Varying.....	483, 484
Terrajaponica.....	1146	Flax, hemp, or ramie.....	530
Terrazzo.....	131	Lace.....	804
Terry cloth.....	501, 502	Linen.....	531
Articles made of.....	496, 522	Picot or loop.....	526
As pile fabric.....	500	Spool cotton.....	469, 471
Test:		Tagal.....	553
Polariscopic, defined.....	341	Toy sewing-machine.....	716
Settlement, for sugars, molasses.....	340	Two-ply cotton, on reels.....	471
Testaments, Chinese.....	947	Waste, wool.....	1192
Testimony:		Threaders, needle.....	308
Appraisers may require.....	1121	Threads:	
Authority of General Appraisers to require.....	1421	Artificial silk.....	629
Before Board of General Appraisers.....	1332, 1333, 1334	Clipped.....	485
Collector may require importer to give.....	1121	Metal.....	271, 272, 273
Competency of witness.....	1710	Or strings, tarred jute.....	863
Expert.....	1710	Or yarns, silk.....	605
Of customs officials.....	1710	Other than ordinary.....	483, 485, 486
Preservation of.....	1121	Thrown silk.....	605
Tetanus antitoxins.....	905, 906	Thumb tacks.....	1059
Tetrapol.....	102	Thyme.....	438
Soup.....	101	Leaves.....	983
Tetrachlorophthalic anhydride.....	48	Oil.....	74
		Seed.....	393
		Thymocresol.....	1111

	Page.		Page.
Thymol.....	39	Time—Continued.....	
Ticket-numbering machines.....	1054	For appeal to reappraisement.....	1832, 1338
Ticket printing and vending machine.....	302	By collector.....	1332, 1341
Tickets on dress goods.....	1443	For appeals from board's decision.....	1496,
Tidies:			1502, 1503
Lace.....	775, 798, 800	Of exportation.....	1434
Nottingham.....	803	Proviso in paragraph 450, act of 1909.....	1031
Ties:		When duty attaches to imported mer-	
Mull.....	795	chandise.....	1585
Steel railway.....	308	Timeliness of protest.....	1362,
Silk.....	617		1369, 1372, 1396, 1401, 1418
Tiger skins.....	747	Of taking effect of tariff acts.....	1604
Raw.....	1000	Timers.....	290
With stuffed heads.....	747	Tin:	
Tights, cotton, knitted.....	503, 510	Ash.....	1147
Tilbury gloves.....	818	Bars, blocks, pigs, or grain or granulated..	1146
Tile—		Boxes containing biscuit.....	1453
Fireplaces.....	109	Cans.....	1431
Friezes.....	108	Containing lobsters.....	1453
Mantels.....	108, 109	Containing vegetables.....	234
Tiles:		Cigarette boxes.....	858
Boch.....	109, 110	Disks.....	311
Calendar, advertising.....	110	Made from American tin plate.....	911
Ceramic, mosaic.....	108	Dross.....	281, 1147
Circular, measurement of.....	109	Match boxes.....	1443
Corrugated.....	108	Ore.....	1146
Decorated.....	108	Pipes, waste.....	1147
Earthenware cubes on paper.....	110	Plate—	
Embossed.....	108	Drawback on.....	1876
Enameled.....	108	Manufactures of, not specially pro-	
Encaustic.....	108	vided for.....	219
Fire.....	109	Plates.....	197, 198, 199, 200, 202
Flint.....	108, 110	Powdered.....	267, 306
Floor.....	110	Salts and compounds of.....	99
Flooring.....	109	Sheets.....	202
Frieze.....	110	Scrap.....	1146
Framed paintings on.....	110	Taggers.....	197, 198, 199, 200
Glass.....	174	Tea chests.....	1435
Glazed.....	108, 111, 1088	Tetrachloride of.....	100
Gold decorated.....	108	Tincture of opium.....	77
Grooved.....	108	Tins, vegetable.....	234
Hand-painted.....	108	Tinsel—	
Ornamented.....	108	Gauze, trimmings.....	527
Paving.....	108	Toys in chief value of.....	712
Marble.....	174, 175, 177	Wire.....	271, 272, 309
Onyx.....	174, 175	Gauge, standard of.....	272
Pill.....	108, 109	Tintometer standards.....	145
China.....	122	Tips:	
Stoneware.....	119	Lava.....	133, 134
Quarry.....	108, 110	Umbrella.....	261
Roofing.....	108, 110	Tire fabric, cotton.....	510, 516
Semivitrified.....	108, 110	Tires:	
Spar.....	108	Automobile.....	912
Unglazed.....	108	Imported with car.....	222
Vitrified.....	108, 109	Locomotive.....	262
Wall decoration.....	111	Railway car.....	282
Timber—		Worn-out, as scrap.....	1023
And lumber, distinction between.....	1177	Tissue paper.....	639-642
For construction of vessels.....	1558	Coverings for lithographic prints.....	680
Round, unmanufactured.....	1164	Fans.....	748
Sawed or hewn.....	1164	manufactures of.....	639, 642
Time—		Printed.....	642
Detectors.....	288, 289, 292	Titanium.....	185
For filing protest.....	1358, 1365, 1375, 1379, 1383	Tiver in powder.....	97
At subport.....	1366	Tobacco—	
Sundays included in.....	1383, 1391, 1418	And manufactures of.....	349
		American production, reimported un-	
		manufactured, duty on.....	1581

Tobacco—Continued.	Page.	Tools:	Page.
Bags, trick	717	Engravers'	309
Cigar-shaped	354	Forged	313
Commercial designation, scrap	354	Machine	296
Dutiable weight of	1588, 1590, 1677	Of trade	1096, 1098
False invoice of	1263	Architectural drawings	1098
False entry of	350	Arriving separately from owner	1098, 1100
Filler	349	Circus animals	1099
Forfeiture of	349, 350	Horses not	1099
In bond, Cuban, over three years	1524	Statues not	1101
Invoices of	350, 353	Theatrical costumes and effects	1098, 1099
Manufactured—		Trained animals as	1098
Exported without payment of internal revenue tax	908, 910	Rescue appliance	1052
Or unmanufactured not specially provided for	353, 354	Track	223
Pipes	856	Tooth—	
Pouches	856	And disk harrows	890
Scrap	354	Pastes	81, 82
Stems	1148	Soap	84
Sumatra	351	Toothbrushes	84
Waste	354	Toothpick holders, metal or glass	326
Weighing of	350	In miniature houses or cottages	326
Weight on withdrawal	351, 1667	Pyroxlin	326
Withdrawn from warehouse, weight of	1588, 1667	Quill	326
Wrapper, defined	352, 353	Wood or other vegetable substances	325
Todopyrine	48	Top waste	1192
Toilet—		Tops:	
Accessories	760	Angora goat hair, or alpaca	594
Articles	1151	For bags, metal	306
Celluloid	53	Human hair	561
Cases	879	Sprinkler	295
Furnished	810	Wool	561
Crayons	84	Broken	562
Powder booklets	83	Toquilla straw, from Panama	1534
Preparations	81, 82	Tortoise shells	1079
Alcoholic	83	Tournay velvet carpet	585
Bird quills filled with tooth powder	84	Tow waste	1004
Eau de quinine tonique Pinand's	84	Towel rods, glass	170
Drawback on	1574	Toweling:	
Euxesis	83	Cotton crash with colored stripe	482
Pasta Mack	83	Huck	550-551
Sets, ivory	828	Towels:	
Soap	100	Cotton	520
Water	81, 82	Fancy fringed linen	794
Rimmel's	84	Flax	553, 1037
Tolidin	49	Fringed and reversed	555, 556
Tolu balsam	26	Jacquard figured cotton	521
Toluidine	49	Personal effects	1155
Base	48, 51	Turkish	522, 555, 557
Toluol	48	Union table damask	553
Tomato paste	372, 373	Toy:	
Tomatoes	396	Brushes	700
Tombac dress buttons	704	Fans	713
Tomtoms or gongs	837	Kitchen utensils	719
Tongs, blacksmith's	223, 303	Magic-lantern, parts	713
Tonics, proprietary	34	Magic lanterns	721
Tonka-bean crystals	1057	Marbles	710
Tonka beans	106, 1511	Moving-picture film	714
Tonnage—		Music boxes	837
Duties	1382, 1391, 1418	Mustaches and masks, paper, chief value	832
Tax, foreign-built yachts	1221	Necklaces, bracelets, and brooches	714, 719
Tonqua beans	106, 1511	Pinafores	715
Tonquin	106, 1511	Sewing machines	716
Tool bags, bicycle	222	Tea sets—	
		China	123
		Stoneware	120
		Violins	720

Toy—Continued.	Page.	Page.
Watch chains.....	721	223
Watches.....	717	Trade—
Toys:		Agreements, the President authorized to
Agate marbles.....	722	make..... 1509
Balloons.....	711	Catalogues..... 661
Birch-bark canoes.....	334	Marks..... 1226, 1227
Bonbon holders.....	721	Meaning of tariff terms..... 1733
Bracelets.....	714, 719	Names of articles..... 1297
Bullions.....	271	Pamphlets..... 1738
China.....	122, 123	Usage..... 1733
Christmas-tree ornaments.....	713, 717, 719, 721	Tragantine..... 64
Cigar fans.....	718	Tragasol..... 1139
Clown sets.....	718	Trained snakes..... 1099
Commercial designation.....	715, 721, 723	Tram, silk..... 605
Composed of tinsel or metal thread.....	271	Tranks glove..... 818
Composed wholly or in chief value of		Transfer—
celluloid.....	717	Of cause from one board to another..... 1321
Decalcomania transfers.....	718	Equipment of vessel in port..... 1661, 1664
Deception wine glasses.....	713	Of sea stores..... 1661
Defined.....	95, 715, 717, 721, 722	Paper, wet..... 257, 258
Doll carriages.....	719	Decalcomania..... 658
Drinking cups, small.....	721	Pictures or decalcomania..... 718
Earthenware.....	723	Transit—
Fans, doll.....	721	Baggage..... 11, 1492
Finger rings, small.....	719	Merchandise..... 7
Finger traps.....	718	Transportation charges..... 1443, 1448, 1453
Firecracker, fans.....	718	From place of production to principal
Flags, small.....	719	market..... 1303
Glass balls for Christmas trees.....	718	Transshipment of cargo, is unloading..... 1645
Harmonicas, cheap.....	719	Traps, rat, wire..... 216
India rubber and tinsel.....	271	Traveling—
Jew's-harps.....	719	Rolls—
Jouets à musique.....	722	Cotton and wool..... 526
Kindergarten embalming sets.....	713	Part wool, cotton, or flax chief value..... 568
Kitchen utensils.....	719	Rugs..... 597
Lahn.....	271	Wool..... 569, 570, 571
Lame.....	271	Sets..... 808, 809
Lithograph figures.....	721	Travertine building stone..... 183
Magic lanterns, parts, and slides.....	719	Trays, bamboo..... 327
Metal thread.....	271	Treaties:
Mirrors.....	719	Construction of..... 1687, 1688
Moving-picture films.....	714	Favored-nation clause in..... 1513, 1516, 1517, 1520
Music boxes.....	719	Inconsistent with subsequent statute..... 1224
Necklaces.....	714	Reciprocal trade..... 1509–1522
Of tinsel, india rubber, and other mate-		Treaty—
rial.....	271, 712	Of peace, duty collected after..... 11
Paint boxes.....	95, 710, 712	With Cuba not to be impaired..... 1522, 1525
Paper crackers.....	711	With Portugal, discriminating duty..... 1553, 1554
Paper figures.....	714	With Spain, 1898, construction of..... 1714
Parasols.....	715, 721	Treaty-making power..... 1688
Parts of.....	718, 720	Trees:
Pincushions.....	719	Bark of Uganda..... 870
Pixie plants.....	716	Branches of..... 1056
Scissors.....	721	Christmas..... 1057
Sewing machines.....	721	Fig..... 388
Small musical instruments.....	836	Fruit..... 386
Stoneware.....	119, 120	Imported for Department of Agriculture..... 1091
Teddy-bear muffs.....	716	Ornamental..... 386
Thread for toy machines.....	716	Triangles..... 834
Tinsel wire.....	271	Tricycle..... 953
Watch chains.....	721	Wheels..... 263
Watches.....	717	Triggers silk ornaments..... 788
Whistles.....	721	Trimmed hats..... 694, 752
Willow.....	325	Trimnings:
Workboxes.....	721	Astrakan..... 598
Tracing—		Beaded..... 684, 685, 691
Cloth.....	480, 493	Covered buttons..... 705
Cut to size.....	491	For underwear..... 733
Paper, treated with oil.....	679	

Trim-mings—Continued.	Page.		Page.
Hat—		Tulip bulbs.....	384
And bonnet.....	614, 803	Tulips.....	382
Glass.....	173	Cut.....	384
Made from split straw.....	823	Tumblers, glass.....	152
In chief value of beads.....	788	Tumeric.....	1148
Not specially provided for.....	774, 777	Tungsten.....	185
Silk.....	695	Ore.....	1148
Ribbon.....	613	Tunics, cotton trimmed with wool.....	581
Steel bead.....	692	Tuning—	
Tinsel ganze.....	527	Forks.....	834
Trimmers, mica.....	301	Hammers.....	834, 837
Trinitrotoluol.....	45, 1011	Tunny fish, in tins.....	401
Tripoli.....	1091, 1129, 1130, 1131	Turbillions, fireworks.....	724
Troches, proprietary.....	34	Turkey quills.....	738
Trolley poles.....	319	Turkeys as poultry.....	429
Trophies or prizes.....	1046	Turkish—	
Tropical and semitropical fruit plants.....	999	Goods invoiced in France.....	1618
Tropeolum or nasturtium seeds.....	1110	Muskets.....	248
Tropon albumen.....	894	Toweling.....	500, 557
Trouville batiste.....	799	Towels—	
Trousers—		Cotton.....	522, 523
Buckles.....	273	Flax.....	555
Buttons, metal.....	273	Turner's workbench.....	1100
Traffles:		Turnip seed.....	389
In tins.....	369	Turpentine, Venice, and spirits of.....	1148
Prepared or preserved.....	367	Turtle—	
Trunks—		Meat.....	1072
Duty on unusual covering.....	1436	Shells, polished.....	830
Passenger's, containing dutiable wearing apparel.....	1440	Skins.....	934
Tubers, cultivated for flowers.....	382	Tweezers, dental.....	304
Tuberculine.....	905, 906	Twine:	
Tubes:		Baling.....	822
Boiler, Purves.....	235	Binding.....	931
Chief value hard rubber.....	823	Cable-laid.....	519, 543
Collapsible.....	295	Flax, hemp, or ramie.....	530
Copper.....	270	Gill.....	531
Flexible.....	234	Harness.....	531
Cork stopper.....	709	Jute binding.....	557
Filter.....	133, 134	Of flax or linen.....	531
Gas, steel.....	235	Paper, for binding wool.....	1182
Geissler.....	143, 1090, 1091	Russian or Italian hemp.....	531
Glass.....	146	Salmon.....	531
Hypodermic syringe.....	235	Seaming, of flax.....	531
Ignition, steel.....	236	Twist, silk.....	605, 606
Iron or steel—		Type metals and types.....	287
Boiler.....	231, 232	Antimony produced in bond dutiable as.....	1570
Finished, nor specially provided for.....	231	Percentage of antimony.....	288
Flexible.....	234	Typesetting machines.....	958
Metal, collapsible.....	233	Typewriter—	
Plate metal.....	231	Paper.....	661
Pyrometer.....	124	Ribbons.....	516
Sounding machine, glass.....	144	Typewriters.....	958
Steel.....	235	Typewritten sheets.....	1042
Umbrella.....	261	Typhoid vaccine.....	905
Tubing:			
Cotton.....	528		
Flax pillow.....	551		
Glass.....	142		
Iron or steel, flexible.....	231		
India rubber.....	823, 824, 1090		
Metal, flexible.....	231		
Silk.....	611		
Tubular tanks.....	231, 234		
Tucking, wearing apparel partly made.....	789		
Tuckings.....	774, 777		
Woven.....	797		

U.

Uganda tree bark.....	335, 870
Ultramarine blue.....	87, 88
In packages of 2½ pounds or less.....	39
Umbel and umbel earths.....	90
Umbrella—	
Cloth of silk and cotton.....	629
Handles.....	261
Celluloid.....	53
Gallilith.....	882
Ribs and stretchers.....	261

Umbrella—Continued.	Page.	Unlawful—	Page.
Rods, steel.....	261	Detention of merchandise by collector.....	1235
Runners.....	261	Imports, concealment of property.....	1741
Sticks—		Unpaid duties on merchandise sold from warehouse.....	1659
Metal, tubular.....	861, 863	Unusual coverings:	
Of wood.....	862	Additional duty on.....	1424
Stretchers.....	261	Cumulative duty on.....	1433
Tips.....	261	Display cases for pipes.....	1426
Tubes.....	261	Earthenware teapots.....	1432
Umbrellas.....	861	Fancy boxes for handkerchiefs.....	1443
Japanese paper.....	882	Furniture vans.....	1436, 1438
Parts of.....	261	Iron drums containing creosote oil.....	143, 1432
Umeboshi:		Leather boxes for combs.....	1445
Fruit in brine.....	997, 999	Metal boxes for confectionery.....	1445
Pickles.....	375	Models of houses containing toothpicks.....	1432
Umezuke:		Needle cases.....	254
Fruit in brine.....	997, 999	Tea baskets of bamboo.....	1441
Pickles.....	375	Tea jars.....	1442
Unassembled printed plates as printed matter	674	Tea canisters designed for other use.....	1434, 1435
Unauthorized importations, consignee not liable for duty.....	1230, 1231	Trunks containing merchandise.....	1436
Unbound—		Use otherwise.....	1428, 1436
Books.....	672	Unwrought—	
Printed sheets.....	674	Earth.....	96
Unbleached chemical wood pulp.....	1181	Metals, defined.....	281
Uncleaned rice.....	361	Upholstery—	
Unclaimed goods—		Goods—	
Entry of, after one year.....	1636	Figured.....	503
Exportation of.....	1654	Jacquard figured.....	502
Jurisdiction of Board of General Appraisers.....	1378	Madras muslin.....	502
Liens for freight on.....	1648	Nets and netting.....	503
Proceeds of sale of.....	1696	Leather, enameled.....	804
Underskirts, cotton knitted.....	510	Uranium oxide and salts of.....	1149
Underwear:		Urea.....	39
Combination.....	510	Ureometer, not scientific apparatus.....	1091
Cotton, knitted.....	509	Urns or fonts, marble.....	641
Composed of ramie.....	508, 510	Ursol.....	47
Undervaluation:		Usual coverings, not dutiable.....	918, 1427-1431, 1454
Additional duty for.....	1265, 1268, 1291	Utensils:	
By manufacture.....	1298	Aluminum.....	250
Forfeiture for, does not relieve importer from duty.....	1291, 1296	Hospital.....	250
Fraudulent, penalty for.....	1257-1265, 1297	Kitchen.....	250
Intentional omission of items.....	1291	Glazed or enameled.....	252
More than 75 per cent presumptively fraudulent.....	1265, 1291	Philosophical and scientific.....	1081-1091
Of lemon boxes.....	1273, 1283	Table.....	250
Protest not proper remedy.....	1419		
Seizure for proceeds of sale.....	1276, 1296		
Shipment of better goods than ordered.....	1279		
Similar items on same invoice.....	1297		
Sugar, conditional price.....	1285		
Suspected on invoice.....	1312		
Wrong goods shipped.....	1279		
Undressed fur and fur skins.....	999, 1000		
Unenumerated articles.....	866-876		
Uniforms, flags, etc., for Scottish military company.....	1127		
Union—			
Fabrics, mercerized.....	482		
Suits, cotton knitted.....	509		
Table damask.....	553		
United States, sovereignty of.....	12		
Unloading—			
At intermediate port.....	1645		
For transshipment.....	1700		
Officer's charges, jurisdiction of board.....	1393		

V.

Vaccine virus, antitoxin.....	905, 906
Valerian oil.....	74
Valerianic acid.....	888
Validity of—	
Appraisal.....	1246, 1304, 1307, 1337
Reappraisal.....	1316, 1338, 1339, 1342, 1343
Sugar regulations.....	343
Treasury regulations.....	1155
Valley lily, floressence.....	85
Valonea extract.....	1140
Valonia.....	1149
Extract of.....	1138
Valparaiso wool.....	1182
Value:	
Actual market, to be ascertained by appraiser.....	1300, 1313, 1314
Ascertainment of, under act of 1883.....	1306
Based on weight.....	1299
Basis for determining rate of duty.....	482, 1428
Dutiable, not less than entered or appraised.....	1265, 1270, 1285, 1347

Value—Continued.	Page.	Vegetable—Continued.	Page.
Entered—		Fiber—	
Allowance for shortage.....	1278	Manufactures of.....	556
Commission included in, under duress.....	1276, 1282	Partially manufactured.....	871
Higher than market.....	1269	Ivory—	
Reduction of under Paragraph I.	1267, 1269	Buttons of.....	702
When subject to challenge.....	1343	Manufactures of.....	827
Increase due to—		Rims for buttons.....	707
Drainage of sugar.....	343	Sawed.....	828
Shrinkage of hides.....	1347	Knives.....	243, 244
Invoice—		Pepsin.....	57
Duty on not less than.....	1277, 1278, 1286	Substance—	
Minimum for determining rate of duty.....	1296	Crude.....	1055, 1067
Collector not bound to accept.....	1309	In alcohol.....	33
Unit price is.....	1287, 1288	Tallow.....	1006
Market—		Tins.....	234
Additions or deductions to make.....	1253, 1265, 1275, 1279, 1281, 1292	Tissue baskets.....	330
Advanced by adding percentages.....	1305	Tracing paper.....	681
Ascertainment of by appraisers.....	13, 1270, 1317	Vegetables:	
Cost of production as means of ascertaining.....	1313-1317	Cut, sliced, or otherwise reduced in size..	370
Domestic price as guide to.....	1313, 1316	Drugs—	
English goods from Canada.....	1305	Advanced.....	54
Evidence of.....	1308	Crude.....	979
Foreign internal-revenue tax part of.....	1284	Imported in tin containers.....	234
Of furs, interest paid part of.....	1285	In brine.....	374
Purchase price greater than.....	1299	In natural state, not specially provided for.....	394, 395
Time of importation.....	484, 1347	Pickled or packed in salt.....	270
Of chocolate, method of determining.....	431	Prepared in any way.....	370, 371
Of component materials, method of ascertaining.....	624	Vellings.....	774, 776, 798
Of foreign coins.....	1618, 1621, 1624, 1629	Chiffon or mousseline.....	798
Of goods seized for undervaluation.....	1285	In the piece.....	802
Of warping silk.....	492	Vells:	
Of stone ballast.....	1349	Automobile.....	778
Statement of, on baggage.....	1259	Crape.....	804
Unit price of goods governs.....	1268, 1303	Egyptian.....	792
"Valued," defined.....	482	Lace.....	774, 775, 776
Vanilla beans.....	106	Silk.....	804
Reciprocity provision for.....	1511	Vellum.....	1079
Vanillin.....	106	Velours:	
With benzyl-chloride.....	106	Cattle hair and cotton.....	571
Vanity cases:		Cotton, double faced.....	501
Jewelry.....	752, 760	Pile fabrics of flax.....	545
Powder boxes, coin purses.....	1363	Silk chief value.....	607, 608
Varnishes, spirit.....	92	Veluvine white, enamel paint.....	96
Varniolette.....	22	Velvet—	
Vases:		Carpets.....	586
Bamboo.....	327	Cords, pile fabrics.....	501
Bisque.....	122, 123	Draperies.....	1208
China.....	122, 123	Jewelry boxes.....	607
And metal.....	126	Ribbons.....	606, 607, 609
Bronze mounted.....	126, 309	Tablecloth, an artistic antiquity.....	1208
Electroliers, articles of glass and metal.....	1363	Table covers, Jacquard figured.....	503
Household effects.....	951	Velveteen:	
Malachite.....	180	Cotton.....	499
Marble.....	845	Dress facings.....	502
Not statuary.....	851	Velvets:	
Plaster of Paris.....	829	Angora goat hair.....	598
Onyx.....	180	Cotton.....	499
Stoneware.....	119, 120	Cotton chief value.....	501
Terra-cotta.....	122	Dutiable weight.....	609
Veal, fresh.....	1043	Wool.....	563
Vegetable—		Vending machines.....	302
Albumen from Germany.....	1161	Veneers.....	317
Black.....	89	Oak.....	318
Cutters.....	245	Paper backing.....	318
		Venetian—	
		Carpets.....	587
		Red.....	90, 91

	Page.		Page.
Venice turpentine, imitation of.....	1148	Violet pastilles, confectionery.....	347
Verison.....	425, 426	Violets, crystallized, confectionery.....	347
Ventilators, cork.....	709	Violin—	
Veratrine.....	24	Bows.....	837
Verdet raffine.....	935	Cases.....	836, 1442, 1443, 1445
Verdigris.....	935	Mutes.....	834
Vermicelli.....	359	Necks.....	835, 837
Vermilion reds—		Pegs.....	835
Containing quicksilver.....	92	Rosin.....	839
Imitation of.....	922	Strings of silk.....	629
Vermilionette.....	92	Tailpieces.....	835
Vermuth:		Woods.....	318
Excess in bottles of.....	456	Violins:	
Gauge of.....	1518	Household effects.....	953
In bottles, shortage of.....	456	Unfinished parts of.....	835
Leakage of, allowance for.....	452	Toy.....	720
Reciprocity provision for.....	1510	Virus—	
Vessels:		And serums, prohibited importations....	1693
Cast-iron.....	226, 227	Vaccines.....	905
Cylindrical or tubular.....	233, 234	Visiting cards.....	667
Discount, 5 per cent of duty on goods im- ported in American.....	1562	Vitrages.....	775
Discriminating duty on goods imported in other than American.....	1548-1555	Vitriol, blue.....	935
Equipment of.....	1641, 1649	Voltmeters, philosophical apparatus.....	1090
Foreign war, supplies for.....	1562	Vouray, French wine.....	452
Foreign, not merchandise.....	1650, 1652	Vulcanized india rubber.....	827
Forgings for.....	193	Automobile-tire treads.....	825
Materials for construction or repair of. Of the United States, supplies for.....	1557-1562 1227		
Repairs to, in Canada, duty on.....	1638, 1640	W.	
Seizure and forfeiture of.....	1645, 1648, 1650	Wads, gun.....	749
Steam dredge and scow as.....	1650, 1652	Wafers:	
Stranded.....	1645	Cassava.....	1140
Wrecked in water of the United States .	1563, 1651	Confectionery.....	365
Vest buttons, mother-of-pearl.....	705	Containing chocolate, nuts, or fruit.....	363
Vests, cotton, knitted.....	509, 510	Cork.....	708
Vestings, dotted.....	484	Fancy confectionery.....	365
Vestments, material for.....	1123	Leavened edible.....	933
Vetch seed.....	1108, 1109	Licorice, confectionery.....	347
Vials, glass.....	135, 136	Lithographically printed.....	656
Victoria cachous, confectionery.....	348	Not specially provided for.....	932
Vienna—		Sugar.....	363
Bent wood chairs, settees.....	336	Unmedicated.....	933
Lime.....	112	Wagon blocks.....	1164
Views:		Wagons, agricultural implements.....	890
American scenes or landscapes.....	669, 773	Wah san, a vegetable.....	372
Photographic, covered with glass.....	149	Wai san, a vegetable.....	374
Vinaigre de toilette.....	84	Waiver—	
Vine and shrub seeds as seed not specially provided for.....	393	And absence of samples.....	1339
Vinegar.....	438	Of defects in protest.....	1329, 1385
Below standard strength.....	439	Of payment.....	1367
Black currant.....	439	Of protest fee.....	1361
Concentrated.....	439	Of tender.....	1361
Raspberry.....	439	Waistcoat buckles.....	273
Wine.....	439	Walking canes.....	861, 862
Vines, nursery stock.....	386	Wall—	
Vineyard leaves, pickled.....	374	Decorations.....	1055
Vino:		Japanese.....	852
Chianto.....	456	Mottoes.....	789
de Salud.....	36	Paper.....	649
Nebolo, sparkling wine.....	448	Material.....	665
Vinolia.....	22	Printing presses.....	302
Vinotanin.....	16	Pockets—	
		Chief value paper.....	656
		Lithographed.....	659
		Walnut—	
		Catsup.....	377
		Flitches, cabinet wood.....	318, 1176

	Page.		Page.
Walnuts—		Waste—Continued.	
In brine.....	376	Not specially provided for.....	863
Shelled or unshelled.....	421, 422	Produced in manufacturing bonded ware-	
Pickled.....	377	houses.....	1566
Wantage:		Rabbit-fur.....	864
Ale, porter, and stout.....	459	Rope—	
Allowance for on wines and liquors.....	1677	Old junk.....	1036
Defined.....	455	Paper stock.....	1075
Wine in casks.....	454	Silk.....	1114
War risk insurance.....	1692	Manufactures from.....	601
Warehouse—		Sponge.....	865
Charges.....	1396	Tea for manufacturing purposes.....	30
Entries, liquidation of.....	1420	Tobacco.....	354
Goods in—		Wool.....	1192
Act of August 5, 1861.....	1599, 1600	Watch—	
Bond for duties.....	1653	Bracelets.....	292, 757, 763
Change in rate on 1420, 1457, 1458, 1591, 1593		Chains—	
Fraudulent concealment of.....	1743, 1744	Of steel.....	720
Exportation of.....	1654, 1743	Toy.....	729
Increased weight.....	1420	Dials.....	288
On vessel not.....	1597	Enamel.....	1001
Reimportation of.....	1455	Glasses.....	154
Reliquidation on.....	1401	Guards, leather.....	764
Remaining in bond over three years.....	1598,	Jewels, garnet and sapphire pallet slabs..	293
1653, 1654, 1656		Keys.....	293
Seizure of liquidated duties.....	1455	Material.....	1001
Sold in bond, duties on.....	1655, 1659	Movements.....	288, 289, 293
Weight of.....	1594-1597	Marking of.....	288
Withdrawals, protest on.....	1420, 1589, 1591	Unassembled.....	291
Warping not part of process of weaving.....	492	Wire.....	212, 213
Warps, cotton.....	467	Watchcases.....	288, 289, 293, 763, 921
Wash—		Watch-chain compasses.....	756
Blue.....	87	Watches—	
In packages of 2½ pounds or less.....	39	And parts of.....	288, 289, 293, 763
Cloths, cotton or flax.....	522	And incomplete movements.....	292
Bags, cotton.....	520	Foreign, repaired abroad.....	921
Washers:		Hands and dials added to abroad.....	921
Cork.....	708	Swiss, in American cases.....	922
Iron or steel.....	223, 224	Toy.....	717
Lock.....	224	Watchmakers' loupes.....	167
Parts of ball bearings.....	194	Watchmen's time detectors.....	291
Washing soda.....	104	Water—	
Wastage allowance in refining and smelting.....	1573	Chestnut flour.....	435
Waste:		Chestnuts.....	373
Aluminum.....	264	Chinese.....	424
And junk, old.....	1023	Color—	
Apple.....	864	Boxes.....	95
Artificial silk.....	469, 863	Designs.....	677
Bagging—		Paints.....	712
Paper stock.....	1075, 1076	Paints in boxes with brushes.....	97
Rags.....	864	Holy, from Lourdes.....	1050
Cork.....	975, 976	In tins.....	1670
Cotton.....	976, 978	Marasque.....	872
Advanced or manufactured.....	467	Of Ayr whetstones.....	131
Defined.....	863	Watered paper.....	652
Flax.....	1075, 1076	Watering pots and pails, diminutive, toys...	721
Card.....	1076, 1077	Watermark, paper.....	663
For paper stock.....	1075	Waterproof—	
From articles free of duty.....	864	Cloth.....	489, 493, 491, 570
From lead linings of acid furnaces.....	865	Chief value of rubber.....	824
Fur.....	864	Cotton.....	493
Granite.....	181	Part wool.....	566
Gunny bagging or cotton tares.....	1102	Garments, wool and india rubber.....	583
Hemp.....	1075	Patent packing, surface-coated paper	
Junk.....	1023	chief value.....	652
Jute.....	1075, 1077	Raincoats.....	824
Mica.....	116	Velvet.....	491
Scrap not.....	117		

Waters:	Page.	Wearing apparel—Continued.	Page.
Cherry, medicinal.....	84	Of persons arriving in the United States.....	1151-1160
Floral and flower, not containing alcohol.....	81, 82	Part of braid.....	615
Laurel, medicinal.....	84	Part silk.....	617
Mineral, natural and imitation.....	465, 466	Partly made up.....	498, 789
Orange flower.....	83, 84	Personal effects.....	1151-1159
Potash.....	466	Plush mohair.....	581
Proprietary.....	34	Raincoats, part wool.....	497
Rose.....	83, 84	Repaired abroad.....	915
Soda.....	463	Shawls, cotton and wool.....	498
Sprudel.....	466	Silk.....	614-617
Toilet.....	81, 82	Belts.....	613, 616
Wax—		Dress shields.....	617
Candles of paraffin.....	820	Garters.....	613
Carnauba.....	1150	Hats, part wool.....	581
Chinese.....	1151	Neckties.....	617
Figures.....	722	Part netting.....	615
For phonograph records.....	889	Tennis jackets, part wool.....	498
Lay figures.....	1123	Velvet, partly made up.....	651
Manufactures of.....	734, 820	Waterproof, wool and india rubber.....	583
Matches.....	725	Wool.....	578-584
Montan.....	1150	And silk.....	628
Pearls, glass chief value.....	691	Caps.....	580
Recording.....	820	Caps, knitted or crocheted.....	582
Sealing.....	821	Fringed hoods.....	580
Shellac.....	1150	Knitted.....	569
Vegetable or mineral.....	1150	Mufflers.....	583
Wreaths.....	738	Part of braid.....	580, 581
Wearing apparel:		Part trimmings.....	581
Appliquéd.....	496	Slippers, part wool.....	499
Abdominal supporters as.....	496	Women's collars, embroidered.....	497
Cattle hide and skin.....	740	Weasands or ox gullets.....	867
Chief value of beads.....	683	Weather strips, wood.....	1167
Cotton.....	495	Webbing:	
Aprons.....	496	Artificial, silk.....	631
Bathing trunks.....	499	Cotton.....	542, 543
Bibs.....	496	Elastic.....	512, 518, 519, 584
Gloves.....	508	Flax, hemp, or ramie.....	540
Hat linings.....	497	Flax, bookbinders'.....	556
Hats.....	496	India rubber and silk.....	614
Knitted.....	509	Jute.....	542
Printed designs on cloth.....	497	Silk.....	611, 612
Sailor suits with rubber cord.....	499	Wool.....	584
Shawls, knit.....	497	Elastic.....	584
Shirt bosoms, tucked.....	496	Webs:	
Shirt-waist fronts and bands.....	499	Flax, hemp, or ramie.....	532, 533, 540
Trimmed with wool.....	581	Silk.....	611
Diving suits of cotton and rubber.....	497	Wedding books.....	671
Dogskin.....	740	Wedges, iron or steel.....	223
Embroidered.....	784	Weeds:	
Flax, hemp, or ramie.....	540	Drugs—	
Fur.....	740	Advanced.....	54
In part of wool.....	745	Crude.....	979
Glove lining, part wool.....	582	Manufactures of.....	821
Goatskin.....	740	Weight—	
Hair rolls, "rats".....	581, 582	And gauge.....	1670
Hatbands.....	498	Actual as against trade custom.....	1670, 1673
Hemp soles.....	497	Allowance for decrease in.....	1670, 1673
Horsehair.....	631	Ascertainment of.....	1671, 1675
Ice-wool squares.....	582	Base bullion or lead bullion.....	278
Imitation lace.....	795	Determined by customs officials.....	1676
India rubber and cotton.....	498	Dutiable.....	1674, 1677
Lace.....	773	Evidence of, official returns.....	1711
Trimmed.....	787	False invoice.....	1264
Models of women's, entry of, in bond.....	1554, 1555	False return of.....	1261
Muff and boas of dressed lambskins.....	746		

Weight—Continued.	Page.	Whip—Continued.	Page.
Gross duty on, of celluloid articles.....	53	Gut—Continued.	
Invoices to be made out in that of country		Unmanufactured.....	960
of exportation.....	1670	Thongs.....	1031
Jurisdiction of board to review.....	1675	Whipstocks, rattan.....	335
Less than invoice.....	1677	Whips:	
Of boxes and cases not subject of ap-		Carriage.....	334
praisement.....	1299	Dog.....	713
Of brine not part of weight of fish.....	992	Leather.....	713
Of candy.....	346	Not saddlery.....	1037
Of cheese, tare on.....	1667	Whisk brooms.....	699
Of cigarettes.....	356	Whisky:	
Of glass.....	155	American reimported—	
Of goods in warehouse over three years.....	1594	Bottled abroad.....	1582
Of Java picul.....	1675	Dutiable quantity.....	1582
Of linens, fringed.....	555	Identification of.....	923
Of merchandise subject to ad valorem		Constructive cases of 12 bottles.....	457
duty.....	1304	Gauge of, at time of importation.....	1456
Of onions, bushel.....	381	Jugs, decorated earthenware.....	453
Of precious stones, carat.....	767	Reimported, no allowance for breakage	
Of silk.....	1676	and leakage.....	456
Of silk goods.....	626	Whistles:	
Of tobacco.....	1593	Brass, nickel-plated.....	307
On withdrawal, tobacco.....	351	Metal.....	757
	1588, 1590, 1593, 1594	Pewter.....	721
Return of United States weigher is con-		White—	
clusive.....	1677	Enamel.....	174
Spanish libra.....	1676	Glass enamel.....	1001
Weighers' fees abolished.....	1460, 1461	Joria, wool.....	1190
Weighing charges on goods entered for export.	1461	Lauan, wood.....	318
Weights, paper, anvil-shaped.....	221	Lead.....	91, 314
Weinastbest, asbestos.....	821	Phosphorus matches, prohibited impor-	
Weissbier, condensed, as malt extract.....	461	tation.....	725
Welding material, metal, borax chief value..	869	Pigment containing lead.....	91
Welsbach mantles, unfinished.....	281	Pine, lumber.....	1171, 1173
Westrumite, a liquid, chief value asphalt.....	1039	Shellac in rolls.....	57
Whalebone:		Sulphide of zinc.....	93
Manufactures of.....	821	White-ash timber.....	1174
Split.....	1160	White oak—	
Strips.....	826	Flooring, Japanese.....	332
Unmanufactured.....	1160	Logs.....	1167
Whale oil.....	67, 1065	Lumber, Japanese.....	316, 317
Wheat.....	1160	Whitewood lumber and timber.....	1164, 1173
Bleached heads of.....	1005	Whiting.....	93
Bounty on, by Germany.....	1534	Wicker baskets containing sewing sets.....	807
Bran.....	1161, 1163	Wicker-covered bottles.....	324
Flour.....	1160	Wicking:	
Frozen.....	1161	Candle, cotton.....	511
Heated.....	1161	Lamp—	
Products not specially provided for.....	1160	Cotton.....	511, 515, 519
Sheaves of, grasses, flowers.....	739	Stove, cotton.....	511
Wheel chairs.....	1153	Wicks—	
Wheels—		Or needle cushions.....	514
And axles.....	913	Sulphur.....	873
Bicycle.....	263	Wigs, dolls'.....	713, 721, 722
Corundum.....	723	Wild—	
Emery.....	723	Animals—	
Hubs for.....	1164	For breeding purposes, not free.....	902
Railway.....	262	For exhibition in zoological collec-	
Steel file.....	303	tions.....	902, 904
Tricycle.....	263	Birds, plumage of, prohibited importation	729
Whetstone blocks.....	1050	Geese.....	931
Whetstones.....	128	Willow—	
And hones.....	1015	Baskets.....	323, 329, 330
Water of Ayr.....	131	Bassinetts.....	328
Whip—		Braids for hats.....	693
Gut—		Chip.....	323
Manufactures of, not specially pro-		Cradles.....	328
vided for.....	818		

Willow—Continued.	Page.	Wines—Continued.	Page.
Cricket bats.....	324	Containing more than 24 per cent of alcohol.....	448
Defined.....	329	Excess of, in bottles.....	448, 457, 458
For basket makers' use.....	323, 325	Damaged by sea water.....	1472
Furniture.....	323, 325	Leakage of.....	453, 1515
Glass flasks, covered with.....	325	Not household effects.....	953
Laces for making hats.....	693	Outage of, in casks.....	454
Lunch baskets, metal chief value.....	329	Reciprocity provision for.....	1510
Pill boxes.....	325	Shortage of.....	452, 455, 456
Plaits for hats.....	693	Sparkling.....	447, 448, 1510
Sheets—		Still.....	448, 1510
Or squares for hats.....	693, 695, 697	Wings:	
Unbleached.....	695	Gold, silver, etc.....	271
Split.....	323, 1178	Manufactured feather articles.....	733
Sticks.....	324	Of wild birds, importation of; prohibited.....	729
Toys.....	325	Wintergreen, oil of, synthetic.....	77
Woven strips known as sparterie.....	325	Wire—	
Wilton—		Articles, coated.....	216
Carpets.....	585	Articles manufactured from.....	208
Rugs.....	588, 591	Baling.....	1016, 1163
Wind—		Barbed.....	1163
Matches.....	725	Bonnet.....	212, 213
Shields.....	169	Brass.....	213
Window-blind cloth.....	490	Cable.....	216
Window—		Card.....	213
Blinds, Lancaster, cotton.....	491	Clock.....	212, 213
Curtains—		Coated.....	216
Lace.....	773, 798	Coiled.....	214
Made on Nottingham machine.....	523	Collar supporters.....	215
Frames, iron or steel.....	189	Cloth.....	213, 214, 218
Glass—		Corset.....	212, 213
Broken.....	154	Covered with cotton, silk, etc.....	212, 213
Common.....	152, 153	Crimoline.....	212, 213
Stained or painted.....	168	Fencing, galvanized.....	1163
Hollands, cotton.....	491, 492, 493	Fishhooks.....	257
Paper.....	649	Fly catchers, coated with chemical compound.....	871
Sashes, iron or steel.....	189	Galvanized fence.....	1163
Windowphanie paper.....	649	Gauze.....	214
Windows—		Gauze bolting cloth, copper.....	217
For church, stained.....	1204	Grooved.....	214
Painted or stained.....	1205	Hat.....	212, 213, 215, 218
Wine:		Braid, silk covered.....	628
Bovril.....	458	Heddles or healds.....	212
Byrrh.....	452	In U forms.....	214
Chianti.....	456	Iron or steel—	
Chinese.....	443, 444	Coated.....	212, 213
Coloring for.....	54	Flat.....	212, 213
Ginger.....	448	Round.....	212, 213
Glasses—		Lead.....	278
Deceptive.....	713	Manufactures of, not specially provided for.....	212, 213
Trick.....	173	Masks.....	832
Lees.....	25	Nails.....	1058
Crude, reciprocity on.....	1510	Needle.....	212, 213
Mirin as still.....	454	Nettings.....	213, 218
Of creosote, Morins.....	36	Nickel alloy.....	215, 217
Oil of.....	77	Piano.....	212, 213
Prune.....	461	Platinum—	
Rhine wine mouseux.....	448	And iridium.....	1092
Rice.....	448	Nickel and iron.....	215
So-called vinegaras.....	439, 458	Substitute.....	215
St. Leon as still.....	455	Rat traps.....	216
Vouray as still.....	452	Ribbon.....	215
Wines:		Rods—	
Allowance for breakage and leakage of.....	448, 449, 1515	Bronze.....	973
Cases with hinges and locks, unusual coverings for.....	1423	Iron and steel.....	209, 210

Wire—Continued.	Page.	Woods:	Page.
Rods—Continued.		Apple.....	316
Iron or steel, cold rolled, etc.....	209, 210	Ash, not cabinet.....	1172
Iron and steel, polished.....	209, 210	Bamboo.....	1174
Rolled.....	202	Birch.....	318, 1172
Rope.....	212, 213, 214, 216, 217, 1558	Box—	
Additional duty on.....	1296, 1288	In the log or rough hewn.....	1174
Covered with hemp.....	529	Sawed.....	315
Iron or steel, with jute cores.....	218	Briar, ivy, laurel, and similar woods.....	315
Screw rods.....	211	Cabinet—	
Silver.....	272	In the log or rough hewn.....	1174
Staples.....	1058	Sawed.....	315
Stitching machine.....	959	Cedar—	
Strand.....	212, 213	In the log or rough hewn.....	1174
Telegraph.....	212	Sawed.....	315
Telephone.....	212	Cherry, rough.....	318
Tinsel.....	271, 272, 308	Circassian walnut.....	316
Watch.....	212, 213	Ebony—	
Wire-bound cotton hose.....	234	In the log or rough hewn.....	1174
Wired glass.....	155, 156	Sawed.....	315
Wireless apparatus.....	1562	For tanning.....	1136
Wistaria bags and baskets.....	331	Granadilla—	
Withdrawal from warehouse:		In the log or rough hewn.....	1174
Dutiable weight.....	350, 1588, 1590, 1593, 1594	Parts of musical instruments.....	835
Duty applicable to.....	1457, 1590	Sawed.....	315
For export and not exported, duty due... ..	1743	Hair.....	1174
For exportation within three years, bond		India malacca joints.....	1174
for.....	1653, 1654	Lance.....	1174
Gage of whisky.....	1596	Lauan.....	318
Protest on.....	1589, 1591	Lignum-vita.....	1174
Rate and weight distinguished.....	1590	Logs.....	1164, 1168
Sugar.....	1458, 1595	Lumber.....	1164
Supplies for vessels of the United States ..	1227	Mahogany—	
Tobacco, weight of....	351, 1588, 1590, 1593, 1594	In the log or rough hewn.....	1174, 1178
Under reciprocity treaties.....	1592	Sawed.....	315
Witherite, ground carbonate of baryta.....	1163	Myrtle.....	1174
Wobla, from the Caspian Sea.....	991	Orange.....	1174
Wolfe's aromatic Schiedam Schnapps.....	445	Partridge.....	1174
Wolfram metal.....	185	Pimento.....	1174
Women's gloves.....	813, 817	Pulp.....	1164
Wood.....	1164	Air dry weight.....	1187
Alcohol.....	894	Allowance for moisture in.....	1179
Ashes and lye of.....	925	Bleached.....	1182
Baskets.....	328, 329	Chemical.....	1179
Beads of.....	684	Export duty.....	1181
Blinds of.....	326	From Canada.....	1537
Blocks for engravers' use.....	315	From New Brunswick.....	1537
Canoes, diminutive.....	334, 335	From Nova Scotia.....	1537
Carvings.....	1054	From Province of Quebec.....	1180
Charcoal.....	963	From Sweden.....	1180
Cork.....	975	Manufactured under a special agree-	
Fire.....	1164	ment with the Province of Ontario.	1686
Flour.....	1164, 1167, 1171, 1172	Manufactures of.....	752
For violins.....	318, 1171	Manufactured in Germany.....	1180
Furniture of.....	331	Mechanically ground.....	1179
Interiors.....	335	Moisture in.....	1675
Jewelry boxes of.....	607	Parchment paper.....	651
Kindling.....	1164	Unbleached chemical.....	1181
Packing-box, shooks of.....	320	Rattan.....	1174
Pencils.....	853	Reeds.....	323, 324, 325, 1174
Screws.....	260, 261, 327	Rosewood—	
Settee of.....	333	Sawed.....	315, 318
Shaving—		In the log or rough hewn.....	1174
Ropings.....	822	Sandalwood logs.....	1170
Veneers.....	318	Satinwood.....	315
Statuary of.....	851	In the log, etc.....	1174
Sugar-box shooks.....	320	Spanish cedar.....	1174
Toothpicks of.....	325	Timber, round, unmanufactured.....	1164, 1168
Veneers of.....	317, 318		

Woodcuts:	Page.
Printed	947
Unbound	1194
Wood-covered slate pencils	854
Wool-lined straw baskets	329
Wooden—	
Bead chain	688
Beads, for rosaries	690
Beams containing spun silk	1428
Boxes—	
As coverings for Sumatra tobacco	1436
Containing bottles	1443
Cases, containers	1433
Casks	1431
Crosses, regalia	1122
Figures, not regalia	1123
Frames	649
Legs, models for	829
Models of machinery	1052
Shelves	1127
Spools—	
Distinct from their contents	1427
With silk yarn thereon	1426
Wool:	
Advanced by any process of manufac-	
ture	561
And cotton interlining	567
And silk dress goods	576
Appraisement of	1446
Art squares	590
Bandings	584
Bedsides	590
Beltings	584
Belts	584
Bindings	584
Blankets	572, 573
Braces	584
Bunting	574-576
Cards	883
Carpets	585, 591
Cashmere goat	593
Classes of	1182-1187
Cloth carriage aprons	569
Clothing	578-584
Cloths	563-572
Coats, fur-lined	744
Combed	561, 1534
Component material flax chief value	627
Cords	584
And tassels	584
Cost of weighing	1441
Covers	590
Definition of	591
Dress goods	574-576, 599
Dutch carpets	587
Duty on, under proviso in paragraph 650,	
Act of 1913	1187
Elastic webbings	584
Embroideries	599
Falls, vells	783
Felt—	
Cattle hair and jute	566
Not woven	563, 566
Flannels	572, 573
Garments, fur-lined	746, 747
Glass	151, 170
Gloves	563
With leather facing	815

Wool—Continued.	Page.
Gorings	584
Grease	67, 68, 1007
Hassocks	590
Hose and half-hose	563, 568
Italian cloths	574
Knit fabrics of	563
Knit goods	617
Manufactures of, not specially provided	
for	563, 568
Mats	590
Mill sweepings	1077
Mittens	563
Olein	69
On the skin, weight of	1189
Packed with hides	1677
Pile fabrics	563
Plushes	563
Powder puffs	568
Rags	1102, 1193
Ribbons	584
Roving or roping	561
Rugs for floors	590
Samples of standard	1182, 1189
Schedule 1913, time of taking effect	599
Screens	590
Shawls	583, 584
Sheep	1182
Steel	208
Stockings	563
Suspenders	584
Tops, broken	562
Traveling rugs	570
Unwashed	1183, 1184, 1185
Value at time of shipment	1629
Velvets	563
Waste and rags, mixed	1193
Wastes	1192, 1194
Wearing apparel	578-584, 1030, 1159
Fur-lined	746
Webbings	584
Yarns	562
Workbaskets, chief value leather	807
Workboxes, children's	721
Works of art:	
American artists residing abroad, pro-	
ductions of	1199-1206
Antiquities more than 100 years old	1206
Artists' proof etchings	1194
Collections of, in illustration of progress of	
arts and sciences	1197
Defined	839, 841, 1194
Differentiated	1209
Engravings—	
Not specially provided for	839
Unbound	1194
Etchings—	
Artists' proof unbound	1194
Not specially provided for	839
For exhibition by professional artists or	
lecturers	1195
For presentation to institutions	1199
Original drawings and sketches	1194
Original paintings in oil or water colors	1194
Original sculptures	1194
Paintings in oil or water color not spe-	
cially provided for	839
Pen and ink drawings	839, 1194

Works of art—Continued.

	Page.
Statuary—	
Not specially provided for.....	839
Original.....	1194
Worm gut—	
Manufactures of.....	818
Unmanufactured.....	960, 961
Wormwood seeds.....	393
Worsted—	
Braids.....	790
Cloth to be classified as woollen, act May 9, 1890.....	565
Cloths.....	571
Dress goods.....	569, 577
Manufactures of.....	570
Yarn twisted with spun silk.....	627
Yarns.....	563
Wortles.....	194
Woulf bottles.....	139
Woven—	
Crosses for chasubels.....	1123
Fabrics—	
Asbestos.....	820
Flax, hemp, or ramie.....	551-558
Jute, plain, not bleached, colored, or printed.....	925-929
Jute, plain, dyed, colored, or printed.....	543-545
Silk.....	617-620, 784
Figured.....	486
Figured cotton cloth.....	487
Palm leaf.....	695
Tuckings.....	797
Wrapper tobacco.....	352
Defined.....	352, 353
Duty on.....	350
Wrapping paper.....	664, 665
Coated.....	666
Cloth-lined, waterproof.....	669
Oiled and cotton-lined.....	667
Waterproof.....	645
With a surface design.....	645, 666
Wreaths—	
And crosses mounted on wire.....	737, 740
Composed of feathers, flowers, leaves, etc.....	729, 735
Cycas palm leaves in.....	735
Metal.....	737
Moss.....	833
Of dried and dyed immortelles.....	730
Statice.....	734
Wax.....	738
Wrecked goods, entry of.....	1563-1565, 1652
Wrenches.....	304
Wrist pins.....	203, 204
Wristlets cotton knitted.....	510
Writing—	
Paper.....	639, 661
Sets.....	632
Wrought by hand.....	848
Wrought iron, for ships.....	193

X.

Xylidine, paragraph 23.....	49
Xylenol.....	969
Xylol.....	48

Y.

	Page.
Yachts:	
Entrance and clearance of.....	1225
Foreign-built American owned.....	1226
Foreign built tonnage tax.....	1221
Yak laces.....	1727
Yam flour.....	875
Yams.....	1213
Yarmouth bloaters and Digby chicks, fish.....	990
Yarn:	
Angora, of rabbits' fur.....	747
Artificial silk.....	630, 631
Carded cotton.....	467
Carpets.....	587
Cotton, mercerized.....	470
Goat hair.....	563
Imitation silk.....	633
Schappe silk.....	602
Silk-chenille.....	505, 605, 606
Spun silk on spools.....	603
Supercarded.....	469
Tarred lath.....	530
Waste.....	1192
Warp cotton.....	467
Worsted.....	563
Cost of winding, hanking, and packing.....	1442
Twisted with spun silk.....	627
Yarns:	
Alpaca hair.....	594
Angora hair.....	594
Artificial silk.....	629, 630
Cotton—	
Number of.....	469
Used on embroidery machines.....	470
Flax, single.....	531
Hemp.....	531
Jute, single.....	529
Knicker, slub or fancy.....	469
Rabbit hair.....	595
Ramie.....	531
Schappe silk, number of.....	603
Silk.....	605, 606, 613
Skeining of.....	1453
Wool.....	562
Worsted roving.....	563
Yellow—	
Joria wool.....	1190
Knelat wool.....	1190
Metal.....	268, 269
Pine.....	1173
Yolk of eggs.....	379
Yokes, cotton crocheted.....	526
Yuk Yuk, lily root.....	396
Yuletide.....	1061

Z.

Zabajone, spirituous beverage.....	444
Zaffer.....	1209
Zander's mechanico therapeutic apparatus.....	1088
Zarapes, Mexican blankets.....	574
Zibeline or ripple cloth.....	597
Zidac, unfinished, manufactures of wool.....	566
Zinc—	
And lead bearing ores.....	277
Ash, or dross.....	295

Zinc—Continued.	Page.	Zinc—Continued.	Page.
Bearing ores, entry of.....	294	Oxide of.....	93, 314
Additional duty on.....	1268	Sheets—	
Appraisalment of.....	1315	Coated with metal.....	198
Smelting of in bond.....	1570	Coated with paint.....	200
Boxes, circular.....	233	Enameled.....	200
Chloride of.....	94	Lithographic.....	295
Chromate of.....	98	Spelter or tutenague.....	295
Dross and skimmings.....	280	Strips, nickeled.....	308
Dust.....	294	Sulphate of.....	94
Dust or indigo auxiliary.....	1140	White sulphide of.....	93
In blocks, pigs, or sheets.....	294	Zizania aquatica, seed.....	1109
Nickel-plated.....	201	Zweibach-Schwarzbrod.....	933

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